

**TITLE 8                    SOCIAL SERVICES**  
**CHAPTER 2                FOOD ASSISTANCE AND SUPPORT**  
**PART 2                    REQUIREMENTS FOR PARTICIPATION IN THE CHILD AND ADULT CARE FOOD PROGRAM**

**8.2.2.1                    ISSUING AGENCY:** Children, Youth and Families Department (CYFD).  
 [8.2.2.1 NMAC - Rp, 8.2.2.1 NMAC, 06-15-09]

**8.2.2.2                    SCOPE:** This policy applies to all CYFD staff who work with the child and adult care food program (“CACFP”) and to participating institutions including sponsoring organizations, independent centers and family child care providers.  
 [8.2.2.2 NMAC - Rp, 8.2.2.2 NMAC, 06-15-09]

**8.2.2.3                    STATUTORY AUTHORITY:** The NM food assistance and support program regulations are administered pursuant to regulation promulgated by the US department of agriculture Code of Federal Regulations, 7 CFR Part 226, pursuant to Section 17 of the National School Lunch Act, as amended.  
 [8.2.2.3 NMAC - Rp, 8.2.2.3 NMAC, 06-15-09]

**8.2.2.4                    DURATION:** Permanent  
 [8.2.2.4 NMAC - Rp, 8.2.2.4 NMAC, 06-15-09]

**8.2.2.5                    EFFECTIVE DATE:** June 15, 2009, unless a later date is cited at the end of a section.  
 [8.2.2.5 NMAC - Rp, 8.2.2.5 NMAC, 06-15-09]

**8.2.2.6                    OBJECTIVE:** To establish regulations for administration of the child and adult care food program, (“program”), including requirements for participating organizations.  
 [8.2.2.6 NMAC - Rp, 8.2.2.6 NMAC, 06-15-09]

**8.2.2.7                    DEFINITIONS:**

- A. “Act” means the National School Lunch Act, as amended.
- B. “Administrative costs” means costs incurred by an institution related to planning, organizing, and managing a food service under the program and allowed by the state agency financial management instruction.
- C. “Administrative review” means the fair hearing provided upon request to:
  - (1) an institution that has been given notice by CYFD of any action or proposed action that will affect their participation or reimbursement under the program, in accordance with 7 CFR Part 226.6(k);
  - (2) a principal or individual responsible for an institution’s serious deficiency after the responsible principal or responsible individual has been given a notice of intent to disqualify them from the program; and
  - (3) a day care home that has been given a notice of proposed termination for cause.
- D. “Administrative review official” means the independent and impartial official who conducts the administrative review held in accordance with 7 CFR Part 226.6(k).
- E. “Adult” means, for the purposes of the collection of social security numbers as a condition of eligibility for free or reduced-price meals, any individual 21 years of age or older.
- F. “Adult day care center” means any public or private nonprofit organization or any proprietary Title XIX or Title XX center (as defined herein at BM and BN) which (a) is licensed or approved by federal, state or local authorities to provide nonresidential adult day care services to functionally impaired adults (as defined herein at AN) or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis and (b) provides for such care and services directly or under arrangement made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services. Such centers shall provide a structured, comprehensive program that provides a variety of health, social and related support services to enrolled adult participants through an individual plan of care.
- G. “Adult day care facility” means a licensed or approved adult day care center under the auspices of a sponsoring organization.
- H. “Adult participant” means a person enrolled in an adult day care center who is functionally impaired (as defined herein at AN) or 60 years of age or older.
- I. “Advanced payment” means financial assistance made available to an institution for its program cost prior to the month in which such costs will be incurred.
- J. “At-risk afterschool care center” means a public or private nonprofit organization that is participating or is eligible to participate in the CACFP as an institution or as a sponsored facility and that provides nonresidential child care to children after school through an approved afterschool care program located in an eligible area. However, an emergency shelter (as defined herein at Z), may participate as an at-risk afterschool care center without regard to location.
- K. “Block claim” means a claim for reimbursement submitted by a facility on which the number of meals claimed for one or more meal type (breakfast, lunch, snack, or supper) is identical for 15 consecutive days within a claiming period.

L. "Center" means a child care center, an adult day care center, an emergency shelter, or an outside-school-hours care center.

M. "Child care center" means any public or private nonprofit institution or facility (except day care homes), or any for profit center (as defined herein at AL), required to be licensed and which provides non-residential child care services and supervision for less than 24 hours a day to enrolled children, primarily of preschool age, including but not limited to day care centers, settlement houses, neighborhood centers, head start centers and organizations providing day care services for disabled children. Child care centers may participate in the program as independent centers or under the auspices of a sponsoring organization.

N. "Child care facility" means a licensed or approved child care center, day care home or outside-school-hours care center under the auspices of a sponsoring organization.

O. "Children" means:

- (1) persons 12 years of age and under;
- (2) persons aged 15 and under who are children of migrant workers;
- (3) persons with mental or physical handicaps, as defined by NM law, enrolled in an institution or a child care facility serving a majority of persons 18 years of age and under;
- (4) for emergency shelters, persons age 18 and under; and
- (5) for at-risk after school care centers, persons age 18 and under at the start of the school year.

P. "Component" means one of four food categories of the USDA meal pattern requirements arranged by age group, including:

- (1) milk;
- (2) meat/meat alternates;
- (3) bread/bread alternates; and
- (4) fruits/vegetables.

Q. "Creditable foods" means foods used to meet the requirements for a reimbursable meal. Foods are creditable based on the following:

- (1) nutrient content;
- (2) customary function in a meal;
- (3) listed in the US department of agriculture ("USDA") food buying guide for child nutrition programs;
- (4) listed in the food and drug administration's ("FDA) standards of identity; and
- (5) is not listed in the children youth and families department ("CYFD") non creditable foods list.

R. "Current income" means income received during the month prior to application for free or reduced-price meals and multiplied by 12. If such income does not accurately reflect the household's annual income, income shall be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

S. "CYFD" means the New Mexico children, youth and families department.

T. "Day care home" means an organized nonresidential child care program for children enrolled in a private home licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

U. "Disallowed claims" requires the monetary repayment to the state agency resulting from a meal or meals that have been determined ineligible for reimbursement due to, among other things:

- (1) failure to record meals, types of food served or amounts prepared, in the menu record book as defined herein at AX;
- (2) meals which lack one or more required components;
- (3) meals which contain a non creditable food as a required component; or
- (4) the menu records and food receipts indicate that not enough food was served, or recorded as served, to have given

each participant the required minimum portion size of each component; CYFD uses the USDA food buying guide to determine how many servings of each component were available.

V. "Disclosure" means individual children's program eligibility information obtained through the free and reduced-price meal eligibility process that is revealed or used for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

W. "Disqualified" means the status of an institution, a responsible principal or responsible individual, or a day care home that is ineligible for participation.

X. "Documentation" means the completion of information to determine the eligibility of free and reduced price meals as required in 7 CFR Part 226.2 (definition of "documentation").

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

Z. "Emergency shelter" means a public or private nonprofit organization or its site that provides temporary shelter and food services to homeless children, including a residential child care institution ("RCCI") that serves a distinct group of homeless children who are not enrolled in the RCCI's regular program.

AA. "Enrolled child" means a child whose parent or guardian has submitted to an institution a signed document which indicates that the child is enrolled for child care. In addition, for the purposes of calculations made by sponsoring organizations of family day care homes in accordance with 7 CFR 226.13(d)(3)(ii) and 226.13(d)(3)(iii), "enrolled child" (or "child in attendance") means a child whose parent or guardian has submitted a signed document which indicates the child is enrolled for child care; who is present in the day care home for the purpose of child care; and who has eaten at least one meal during the claiming period. For at-risk afterschool care centers, outside-school-hours care centers, or emergency shelters, the term "enrolled child" or "enrolled participant" does not apply.

AB. "Enrolled participant" means an "enrolled child" as defined herein at AA or "adult participants" as defined herein at H.

AC. "Facility" means a sponsored center or a family day care home.

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

AE. "Family style meal service" means a style of meal service in which both adults and children participate in setting the table, serving the food, eating together and cleaning up after the meal.

AF. "FDPIR" means food distribution programs on Indian reservations.

AG. "Fiscal year" means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

AH. "FNS" means the food and nutrition service of USDA.

AI. "FNSRO" means the appropriate regional office of the food and nutrition service of USDA.

AJ. "Food service management company" means an organization other than a public or private nonprofit school, with which an institution may contract for preparing and, unless otherwise provided for, delivering meals with or without milk for use in the program.

AK. "Food stamp household" means any individual or group of individuals which is currently certified to receive assistance as a household under the food stamp program.

AL. "For profit center" means a child care center, outside-school-hours care center, or adult day care center providing nonresidential care to adults or children that does not qualify for tax-exempt status under the Internal Revenue Code of 1986, and meets the criteria of 7 CFR Part 226.2 (definition of "for profit center").

AM. "Free meal" means a meal served under the program to a participant from a family which 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 TANF reciprocity; or to a child who is a head start participant; or to a child who is receiving temporary housing and meal services from an approved emergency shelter; a child participating in an approved at-risk afterschool care program; 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.

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

AO. "Household contact" means a contact made by a sponsoring organization or CYFD to an adult member of a household with a child in a family day care home or a child care center in order to verify the attendance and enrollment of the child and the specific meal service(s) which the child routinely receives while in care.

AP. "Income standards" means the family size and income standards prescribed annually by USDA for determining eligibility for free and reduced-price meals under the national school lunch program and the school breakfast program.

AQ. "Income to the program" means any funds used in an institution's food service program, including, but not limited to all monies, other than program payments, received from other federal, state, intermediate, or local government sources; participant's payments for meals and food service fees; income from any food sales to adults; and other income, including cash donations or grants from organizations or individuals.

AR. "Independent center" means a child care center, at-risk afterschool care center, emergency shelter, outside-school-hours care center or adult day care center which enters into an agreement with CYFD to assume final administrative and financial responsibility for program operations.

AS. "Infant cereal" means any iron-fortified dry cereal specially formulated for and generally recognized as cereal for infants that is routinely mixed with formula or milk prior to consumption.

AT. "Infant formula" means any iron-fortified infant formula intended for dietary use solely as a food for normal, healthy infants; excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

AU. "Institution" means a sponsoring organization, child care center, outside-school-hours care center, emergency shelter or adult day care center which enters into an agreement with CYFD to assume final administrative and financial responsibility

for program operations.

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

AW. "Medicaid participant" means an adult participant who receives assistance under Title XIX of the Social Security Act, the grant to states for medical assistance programs-medicaid.

AX. "Menu record book" means the official record which is used to document the types of food served and the quantities used to meet USDA meal pattern requirements by sponsoring organizations of child care centers, adult day care centers, outside school hours programs and head starts.

AY. "Milk" means pasteurized fluid types of flavored or unflavored whole milk, low-fat milk, skim milk, or cultured buttermilk which meet NM state and local standards for such milk except that, in the meal pattern for infants (0 to 1 year of age), milk means breast milk or iron-fortified infant formula. All milk should contain vitamins A and D at levels specified by the food and drug administration and be consistent with NM state and local standards for such milk.

AZ. "National disqualified list" means the list, maintained by the US department of agriculture, of institutions, responsible principals and responsible individuals, and day care homes disqualified from participation in the program.

BA. "Non creditable foods" means foods that do not meet the criteria for a creditable food, as determined by CYFD, and appear on the CYFD non-creditable foods list. A meal may contain both creditable and non-creditable foods. Non-creditable foods are allowed to supply calories to meet the energy needs of growing children or to improve acceptability of the rest of the meal. However, non-creditable foods may not be used to meet the meal pattern requirements.

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

BC. "Non profit food service" means all food service operations conducted by the institution principally for the benefit of enrolled participants for which all of the program reimbursement funds are used solely for the operations or improvements of such food service.

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

BE. "Notice" means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by CYFD or FNS with regard to an institution's program reimbursement or participation. Notice also means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a sponsoring organization with regard to a day care home's participation. The notice must specify the action being proposed or taken and the basis for the action, and is considered to be received by the institution or day care home when it is delivered, sent by facsimile, or sent by email. If the notice is undeliverable, it is considered to be received by the institution, responsible principal or responsible individual, or day care home five days after being sent to the addressee's last known mailing address, facsimile number, or email address.

BF. "Operating costs" means expenses incurred by an institution in serving meals to participants under the program, and allowed by CYFD.

BG. "Outside-school-hours care center" means a public or private nonprofit institution or facility (except day care homes) or a for profit center, as defined herein at AL, that is licensed or approved in accordance with 7 CFR Part 226.6(d)(1) to provide organized nonresidential child care services to children during hours outside of school. Outside-school-hours care centers may participate in the program as independent centers or under the auspices of a sponsoring organization.

BH. "Participants" means "children" or "adult participants" as defined herein at Subsections O and H.

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

BJ. "Principal" means any individual who holds a management position within, or is an officer of, an institution or a sponsored center, including all members of the institution's board of directors or the sponsored center's board of directors.

BK. "Program" means the child and adult care food program authorized by section 17 of the National School Lunch Act, as amended.

BL. "Program payments" means financial assistance in the form of start-up payments, advance payments, expansions funds or reimbursement paid or payable to institutions for operating costs and administrative costs.

BM. "Proprietary Title XIX center" means any private, for-profit center (a) providing non-residential adult day care services for which it receives compensation from amounts granted to the states under title XIX of the Social Security Act and (b) in which Title XIX beneficiaries were not less than 25 percent of enrolled eligible participants in the calendar month preceding initial application or annual re-application for program participation.

BN. "Proprietary Title XX center" means any private, for-profit center (a) providing non-residential child or adult day care services for which it receives compensation from amounts granted to the states under Title XX of the Social Security Act and (b) in which Title XX beneficiaries or enrolled participants eligible for free or reduced price meals were not less than 25 percent of total enrolled eligible participants or licensed capacity, whichever is less, in the calendar month preceding initial application or annual re-application for program participation.

BO. "Reduced-price meal" means a meal served, and reimbursed, under the program to a participant from a family that meets the income standards for reduced-price school meals, and as defined in 7 CFR Part 226.2.

BP. "Reimbursement" means federal financial assistance paid or payable to institutions for program costs within the rates assigned by CYFD.

BQ. "Renewing institution" means an institution that is participating in the program at the time it submits a renewal application.

BR. "Responsible principal or responsible individual" means:

- (1) a principal, whether compensated or uncompensated, who CYFD or FNS determines to be responsible for an institution's serious deficiency;
- (2) any other individual employed by, or under contract with, an institution or sponsored center, who CYFD or FNS determines to be responsible for an institution's serious deficiency; or
- (3) an uncompensated individual who the CYFD or FNS determines to be responsible for an institution's serious deficiency.

BS. "SSI participant" means an adult participant who receives assistance under Title XVI of the Social Security Act, the supplemental security income (SSI) for the aged, blind and disabled program.

BT. "Seriously deficient" means the status of an institution or a day care home that has been determined to be non-compliant in one or more aspects of its operation of the program.

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

- (1) one or more day care homes;
- (2) a child care center, emergency shelter, at-risk after school care center outside-school-hours care centers, or adult day care center which is a legally distinct entity from the sponsoring organization;
- (3) two or more child care centers, emergency shelters, at-risk after school care centers, outside-school-hours care centers, or adult day care centers; or
- (4) any combination of child care centers, emergency shelters, at-risk after school care centers, outside-school-hours care centers, adult day care centers and day care homes; the term "sponsoring organization" also includes an organization that is entirely responsible for administration of the program in any combination of two or more child care centers, at-risk after school care centers, adult day care centers or outside-school-hours care centers, which meet the definition of "for profit center" herein at Subsection AL and are part of the same legal entity as the sponsoring organization.

BV. "Start-up payments" means financial assistance made available to a sponsoring organization for its administrative expenses associated with developing or expanding food service program in day care homes and initiating successful program operations.

BW. "State agency list" means an actual paper or electronic list, or the retrievable paper records, maintained by CYFD, that includes a synopsis of information concerning seriously deficient institutions and providers terminated for cause in the state of New Mexico. The list must be made available to FNS upon request, and must include the items listed in 7 CFR 226.2 (definition of "state agency list").

BX. "Suspended" means the status of an institution or day care home that is temporarily ineligible for participation (including program payments).

BY. "Suspension review" means the review provided, upon the institution's request, to an institution that has been given a notice of intent to suspend participation (including program payments), based on a determination that the institution has knowingly submitted a false or fraudulent claim.

BZ. "Suspension review official" means the independent and impartial official from CYFD who conducts the suspension review.

CA. "Termination for cause" means the termination of a day care home's program agreement by the sponsoring organization due to the day care home's violation of the agreement.

CB. "Termination for convenience" means termination of a day care home's program agreement by either the sponsoring organization or the day care home, due to considerations unrelated to either party's performance of program responsibilities under the agreement.

CC. "Tier I day care home" means (a) a day care home that is operated by a provider whose household meets the income standards for free or reduced price meals, as determined by the sponsoring organization based on a completed free and reduced price application, and whose income is verified by the sponsoring organization of the home in accordance with 7 CFR Part 226.23(h) (6); (b) a day care home that is located in an area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price meals; or (c) a day care home that is located in a geographic area, as defined by FNS based on census data, in which at least 50 percent of the children residing in the area are members of households which meet the income standards for free or reduced price meals.

CD. "Tier II day care home" means a day care home that does not meet the criteria for a Tier I day care home.

CE. "Title XIX" means Title XIX of the Social Security Act which authorizes the grants to states for medical assistance program-medicaid.

CF. "Title XX" means Title XX of the Social Security Act.

CG. "Verification" means a review of the information reported by institutions to CYFD regarding the eligibility of participants for free or reduced-price meals in accordance with 7 CFR 226.2 (definition of "verification") and with 226.23(h)(1).

[8.2.2.7 NMAC - Rp, 8.2.2.7 NMAC, 06-15-09]

### **8.2.2.8 APPLICATION APPROVAL, RENEWAL AND TERMINATION:**

A. The children, youth and families department (CYFD) may enter into an agreement for participation in the program with any non-profit 501 (c)(3) organization, government agency or proprietary Title XX organization which meets the established criteria and requirements according to 7 CFR 226.6(b)(1)-(b)(3).

(1) Child care centers must be state licensed, or have tribal approval or military approval if located on a military base and shall comply with 7 CFR Part 226.17.

(2) Adult day care centers must be state licensed, or have tribal approval or military approval if located on a military base and comply with 7 CFR Part 226.19(a).

(3) Outside-school-hours care centers must be state licensed, or have tribal approval or military approval if located on a military base and comply with 7 CFR Part 226.19.

(4) Family day care homes must be state licensed or registered, or have tribal approval or military approval if located on a military base and comply with 7 CFR Part 226.18.

(5) At risk programs must be state licensed or approved, or have tribal approval or have military approval if located on a military base and comply with 7 CFR Part 226.17a.

B. CYFD shall not enter into an agreement with any new applicant sponsoring organization of family day care homes which does not meet the new sponsor criteria. The criteria are as follows: The new applicant must:

(1) demonstrate the need for a new sponsorship by supplying a list of eligible family child care homes which have expressed an interest in participating in the program;

(2) submit documents to establish financial stability and accountability;

(3) demonstrate their method for covering non-program related costs;

(4) document an adequate level of staffing to administer the program and to provide a responsible sponsor representative and an office in the service area within the state of New Mexico, for program clients and state agency staff during normal working hours;

(5) submit a training plan, describing how the sponsor ensures administrative staff is trained in program requirements;

(6) provide assurance that they will not employ an individual in a responsible administrative capacity who is listed on the national disqualified list or is otherwise ineligible for program duties based on requirements in 7 CFR 226.6(b)(1) through (b)(3).

(7) submit a copy of the organization's by-laws, detail of the organization's structure, officers of the organization and a list of their responsibilities;

(8) submit information about the organization's board of directors, including their responsibility in program management, their role in approving or determining fiscal actions and the relationship of board members to others in the organization;

(9) provide assurance that they will not recruit or allow participation of any child care provider who, is on the national disqualified list or is otherwise ineligible to participate,

(10) submit a complete and accurate application for sponsorship.

C. Any non-profit organization, or proprietary Title XX center, wishing to participate as a sponsoring organization in the program shall complete and submit an application packet that includes at a minimum: a management plan, an administrative budget, non-discrimination and non-pricing policy statement, signed agreement, certificate of authority, copy of current letter to households, civil rights questionnaire, certification regarding lobbying, copy of appeal procedures and internal policies and procedures, public release statement, an affidavit or certification statement that the organization has not been terminated from any publicly funded program for failure to comply with that program's requirements and documentation that all institutions under the sponsor are in compliance with licensing, registration and other approval provisions. In addition, all current and prospective sponsoring organizations must be able to demonstrate that they are financially viable, administratively capable, and have internal controls in place to ensure accountability.

(1) Proprietary Title XX centers shall submit documentation that they are currently providing non residential day care services for which they receive compensation under Title XX, and certification that not less than 25 percent of the enrolled participants in each such center during the most recent calendar month were Title XX beneficiaries or were eligible for free or reduced price meals according to school lunch guidelines.

(2) CYFD shall notify new or renewing institutions of approval or denial of their application for sponsorship in writing within 30 days of filing a complete and correct application. If an institution submits an incomplete application, CYFD will notify the institution of the incomplete application and provide technical assistance.

(3) Renewal applications for continued participation in the program shall be submitted annually. CYFD may grant approval for up to thirty six months. In such cases, the institution shall submit a media release, a management plan and a budget on an annual basis to CYFD.

(4) Renewal applications for the fiscal year beginning October 1 shall be submitted to CYFD by August 15. In its discretion, CYFD may accept late renewals after August 15. Renewal applications submitted after September 30, if approved, will be effective the date all required documents are submitted and may result in loss of reimbursement.

D. CYFD shall not approve an institution's application if, during the past seven years, the institution or any of its principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or determined eligible for that program, including the payment of any debts owed, in accordance with 7 CFR Part 226.6(b)(2)(iii)(A).

E. CYFD will notify an institution that it proposes to terminate its program agreement with any institution which fails to satisfactorily and permanently correct a serious deficiency by the date prescribed by CYFD.

(1) CYFD shall not allow more than 90 days for corrective action from the date the institution receives the serious deficiency notice.

(2) CYFD notifies FNS within 15 days of the termination of an institution for failure to correct a serious deficiency. The institution is placed on a national disqualified list.

(3) Serious deficiencies which are grounds for denial of applications and for proposed termination of program participation include, but are not limited to, any of the following:

(a) non-compliance with the applicable bid procedures and contract requirements of federal child nutrition program regulations;

(b) submission of false information to CYFD on the institution's application, including, but not limited to, a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity; a lack of business integrity includes, but is not limited to, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice or any other activity indicating a lack of business integrity as defined by the state agency;

(c) failure to return to CYFD any advance payments which exceeded the amount earned for serving eligible meals or failure to return disallowed start-up or expansion payments;

(d) failure to maintain adequate records;

(e) failure to adjust meal orders to conform to variations in the number of participants;

(f) claiming reimbursement for meals not served to participants;

(g) claiming reimbursement for a significant number of meals that do not meet program requirements;

(h) use of a food service management company that is in violation of health codes;

(i) failure of a sponsoring organization to disburse payments to its facilities within five days of receipt from CYFD as required by 7 CFR Part 226.16 (h);

(j) failure by a sponsoring organization of day care homes to properly classify day care homes as Tier I or Tier II in accordance with 7 CFR Part 226.15(f);

(k) claiming reimbursement for meals served by a for profit child care center or a for profit outside-school-hours center during a calendar month in which less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced price meals or were Title XX beneficiaries;

(l) failure to properly implement and administer the day care home termination and administrative review provisions set forth in 7 CFR Part 226.6(l) and Part 226.16(l);

(m) permitting an individual who is on the national disqualified list to serve in a principal capacity with the institution or, if a sponsoring organization, permitting such an individual to serve as a principal in a sponsored center or as a day care home;

(n) failure to operate the program in conformance with the performance standards set forth in paragraphs 7 CFR Part 226.6(b)(1)(xvii) and Part 226.6(b)(2)(vii);

(o) failure by a sponsoring organization to properly train or monitor sponsored facilities in accordance with 7 CFR Part 226.16(d);

(p) use of day care home funds by a sponsoring organization to pay for the sponsoring organization's administrative expenses;

(q) the fact the institution or any of the institution's principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements; however, this prohibition does not apply if the institution or the principal has been fully reinstated in, or is now eligible to participate in, that program, including the payment of any debts owed;

(r) conviction of the institution or any of its principals for any activity that occurred during the past seven years and that indicates a lack of business integrity; a lack of business integrity includes, but is not limited to, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the state agency; or

(s) any other action affecting the institution's ability to administer the program in accordance with program requirements, and

(t) failure to respond to CYFD requests for investigations of integrity report findings.

F. Sponsoring organizations of family day care home providers shall ensure that all family day care home providers are registered, licensed or tribal or military approved prior to signing an agreement with the sponsoring organization to participate in the program.

G. Sponsoring organizations of family day care homes must initiate action to terminate the agreement of a family day care home for cause if the sponsoring organization determines the family day care home has committed one or more serious deficiency listed in paragraph 7 CFR Part 226.16(l)(2). Serious deficiencies for family day care homes include the following:

(1) submission of false information on the application;

(2) submission of false claims for reimbursement;

(3) simultaneous participation under more than one sponsoring organization;

(4) non-compliance with the program meal pattern;

(5) failure to keep required records;

(6) conduct or conditions that threaten the health or safety of a child(ren) in care, or the public health or safety;

(7) a determination that the day care home has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity; a lack of business integrity includes, but is not limited to, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by CYFD, or the concealment of such a conviction;

(8) failure to participate in training; or

(9) any other circumstance related to non-performance under the sponsoring organization-day care home agreement, as specified by the sponsoring organization or CYFD, including, but not limited to:

(a) the provider is found not at home during stated hours of meal service on two or more consecutive visits and has not notified the sponsoring organization of the intended absence ahead of time;

(b) chronic non compliance with program menu and record keeping requirements;

(c) serving meals outside of the provider's required time frame as documented on the application for participation;

(d) whenever a block claim submitted by the provider cannot be validated by an unannounced visit or parent audits conducted by the sponsor.

H. Sponsoring organizations shall send a notice to family day care home providers advising them of the serious deficiencies in accordance with 7 CFR 226.16(l)(3). Family day care home providers must complete corrective action as soon as possible but no later than 30 days after receipt of the seriously deficient notice.

I. Sponsoring organizations shall notify CYFD within 30 days of terminating a family day care home provider.

J. Terminated providers are placed on a national disqualified list. Once included on the national disqualified list, a family day care home will remain on the list until such time as CYFD determines that the serious deficiency(ies) that led to its placement on the list has(ve) been corrected, or until seven years have elapsed since its agreement was terminated for cause. However, if the day care home has failed to repay debts owed under the program, it will remain on the list until the debt has been repaid.

[8.2.2.8 NMAC - Rp, 8 2.2.8 NMAC, 06-15-09]

#### **8.2.2.9 ADMINISTRATIVE REVIEW PROCESS:**

A. The children, youth and families department will follow the administrative appeal process as described in 8.8.4 NMAC and as required in 7 CFR Part 226.6(k) and for the following state actions:

(1) application denial: denial of a new or renewing institution's application for participation;

(2) denial of sponsored facility application: denial of an application submitted by a sponsoring organization on behalf of a facility;

(3) notice of proposed termination: proposed termination of an institution's agreement (see 7 CFR Part 226.6(c)(2)(iii)(C), Part 226.6(c)(3)(iii)(C), and Part 226.6(c)(5)(i)(B) dealing with proposed termination of agreements with renewing institutions, participating institutions, and participating institutions suspended for health or safety violations);

(4) notice of proposed disqualification of a responsible principal or responsible individual: proposed disqualification of a responsible principal or responsible individual (see 7 CFR Part 226.6 (c)(1)(iii)(C), Part 226.6(c)(2)(iii)(C), Part 226.6(c)(3)(iii)(C), and Part 226.6(c)(5)(i)(B) dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

(5) suspension of participation: suspension of an institution's participation;

(6) start-up or expansion funds denial: a denial of an institution's application for start up or expansion payments;

(7) advance denial: a denial of a request for an advance payment;

(8) recovery of advances: recovery of all or part of an advance in excess of the claim for the applicable period; the recovery may be through a demand for full repayment or an adjustment of subsequent payments;

(9) claim denial: a denial of all or part of a claim for reimbursement, except for late submission as stated in 7 CFR 226.10(e);

(10) claim deadline exceptions and requests for upward adjustments to a claim: decision by CYFD not to forward to FNS an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim;

(11) overpayment demand: a demand for the remittance of an overpayment, or any other action affecting the participation of an institution in the program or the institution's claim for reimbursement;

(12) other actions: any other CYFD action affecting an institution's participation or its claim for reimbursement.

B. The administrative review process procedures are made available in writing each year to all institutions at the time of application for participation in the program and when CYFD takes any action which requires an administrative review as set forth herein.

C. Appellants shall receive adequate notice of the administrative review date and of the right to be represented by legal counsel.

D. Decisions are rendered within sixty days of the administrative review.

E. The determination by the state administrative review official is the final administrative determination afforded to the appellant.

F. Actions not subject to administrative review include FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim, and other situations as per 7 CFR 226.6(k)(3)(ii-iv).

[8.2.2.9 NMAC - Rp, 8 2.2.9 NMAC, 06-15-09]



**8.2.2.10 PROGRAM ASSISTANCE AND REVIEW:**

A. CYFD provides at least annual training and technical assistance, as needed, to participating institutions and sponsoring organizations.

(1) CYFD conducts ongoing program reviews of institutions to assess compliance with state and federal guidelines for operating the program. CYFD may conduct a review of any institution, at any time, without prior notification in order to ascertain program compliance.

(2) CYFD annually reviews at least one-third of all sponsoring organizations.

(3) Independent centers, sponsoring organizations of centers, and sponsoring organizations of day care homes with 1 to 200 providers will be reviewed at least once every three years. Reviews of sponsoring organizations will include reviews of at least 15 percent of their childcare, adult day care and outside-school-hours care centers and at least 10 percent of their day care homes.

(4) Sponsoring organizations with more than 200 homes will be reviewed at least once every two years. Reviews of such sponsoring organizations will include reviews of at least 10 percent of the first 200 homes, 5 percent of the next 800 homes, and 2.5 percent of all homes in excess of 1,000 homes.

B. CYFD conducts reviews for newly participating sponsoring organizations with five or more child care or adult day care facilities, and all home sponsoring organizations, within the first 90 days of program operations.

(1) CYFD conducts pre-approval visits to all newly participating institutions prior to approval of their applications.

(2) CYFD conducts initial reviews of all newly participating center institutions within three to six months of program approval.

(3) CYFD conducts additional reviews of any institution participating in the program which CYFD has determined to have a history of serious deficiencies.

C. CYFD reviews and validates at least one full month of an institution's claim as a sample during program reviews.

D. CYFD conducts follow up visits of institutions found to be seriously deficient within 90 days of the notification to the sponsor of a seriously deficient status.

E. CYFD provides technical assistance to institutions upon request.

[8.2.2.10 NMAC - Rp, 8 2.2.10 NMAC, 06-15-09]

**8.2.2.11 COMPLAINT AND REFERRAL PROVISIONS:**

A. CYFD promptly investigates complaints received by the public or other state offices in connection with the operation of the program, and takes appropriate action to correct any program non-compliance or deficiency.

B. CYFD maintains a file of all such investigations and related actions taken.

C. Institutions found to be non-compliant or seriously deficient receive written notice and are required to correct all violations. CYFD makes the determination about the institution's correction of all violations.

D. CYFD will issue a proposal to terminate the program agreement with institutions if serious deficiencies are not corrected within 90 or fewer calendar days of written notification to the institution.

E. CYFD shall suspend an institution's participation when there is an imminent threat to the health and safety of participants, as per 7 CFR Part 226.6 (c)(5)(i)(A).

F. When CYFD, family nutrition bureau staff observes, during investigations, violations of applicable health, safety, or staff-child ratio standards, or attendance in excess of licensed or other approved capacity, CYFD family nutrition bureau staff shall promptly refer any such violations to CYFD's child care services bureau.

G. CYFD denies reimbursement to providers for program meals served to attending children in excess of the licensed or other approved capacity.

[8.2.2.11 NMAC - Rp, 8 2.2.11 NMAC, 06-15-09]

**8.2.2.12 FINANCIAL MANAGEMENT:**

A. CYFD reviews and approves all institution administrative budgets submitted with the application.

(1) CYFD reviews and approves all budget adjustment requests with adequate justification.

(2) CYFD reviews and approves all changes made to the management plan.

(3) Institutions are responsible for accounting for costs correctly and for maintaining sufficient supporting documentation to demonstrate that costs claimed have been incurred, are allowable to the program and comply with CYFD policies, financial management requirements and with USDA's FNS instruction 796-2, Revision 3 which is distributed to all institutions upon approval to participate in the program.

B. CYFD approves applications and issues start-up payments to eligible institutions, and monitors the use of these payments.

C. CYFD approves applications and issues advance payments to eligible institutions and monitors the use of these payments.

(1) CYFD recovers, from future claims for reimbursement, outstanding start-up and advance payments from institutions which, in CYFD's opinion, are not able to earn these payments.

(2) Institutions, upon CYFD's written approval, may claim reimbursement for the necessary and reasonable costs of ceasing program participation in accordance with USDA's FNS Instruction 796-2, Revision 3, Section VIII(I)(38).

D. Claims for reimbursement are submitted by institutions by the tenth of the month following the month being claimed and report information in accordance with the financial management system established by CYFD.

(1) Each institution certifies that the claim is correct and that records are available to support the claim.

(2) Independent proprietary Title XX centers shall document that not less than 25 percent of enrolled participants were Title XX beneficiaries in the month claimed. Alternatively, the center shall document that it has valid free or reduced price meal applications on file for at least 25 percent of the enrolled children or 25 percent of the licensed capacity, whichever is less. CYFD will review and validate during on site reviews the Title XX documentation or free or reduced meal applications of eligible children claimed to validate the 25 percent requirement.

(3) CYFD shall pay all valid claims within 45 calendar days of receipt. Within 15 calendar days of receipt of any incomplete or incorrect claim which must be revised for payment, CYFD shall notify the institution as to why and how such claim must be revised.

(4) The institution shall retain all records to support the claim for a period of three years after the submission of the final claim for the fiscal year to which they pertain.

(5) All accounts and records pertaining to the program are made available, upon request, to representatives of CYFD, USDA and of the US general accounting office for audit or review.

E. CYFD ensures that payment is not made for meals served to participants attending in excess of the authorized capacity of the institution.

[8.2.2.12 NMAC - Rp, 8 2.2.12 NMAC, 06-15-09]

### **8.2.2.13 AUDIT REQUIREMENTS:**

A. Institutions shall conduct financial audits of their program in accordance with the office of management and budget circulars A-133 and A-110 and the U.S. department of agriculture's uniform federal assistance regulations (7 CFR Part 3015). CYFD instructs institutions of the audit requirements during annual training.

B. Institutions not subject to the OMB A-133 or A-110 audit requirements will have a financial review conducted by CYFD during administrative program reviews which will be conducted no less than every three years and upon any referral or complaint regarding financial operations.

C. Audits are due to CYFD no later than nine months after the close of the institution's fiscal year.

[8.2.2.13 NMAC - Rp, 8 2.2.13 NMAC, 06-15-09]

### **8.2.2.14 PAYMENT PROVISION:**

A. Congress assigns rates of reimbursement for meals, annually.

B. Institutions shall submit to CYFD each month's counts for meals served daily to participants from families meeting the eligibility standards for free meals, participants from families meeting the eligibility standards for reduced-price meals, and participants from families not meeting such guidelines.

C. CYFD uses the meals times rates payment method to reimburse institutions participating in the program.

[8.2.2.14 NMAC - Rp, 8 2.2.14 NMAC, 06-15-09]

### **8.2.2.15 CLAIMS AGAINST INSTITUTIONS:**

A. CYFD shall recover any payment made to an institution for disallowed claims. CYFD identifies disallowed claims during program reviews and considers payments made for such claims as over payments. CYFD shall notify all institutions of the reasons for the disallowed claim and demand reimbursement. The institution may request an administrative review of CYFD's decision as provided in Paragraph (11) of Subsection A of 8.2.2.9 NMAC.

B. Disallowed claims include the following for independent centers:

(1) lack of documentation to verify sufficient milk purchases to meet the required portion size for each age group, as documented in the menu record book and claimed for any month reviewed;

(2) reimbursement for meals, or snacks, claimed which lack required components;

(3) reimbursement for meals or snacks claimed which include non creditable foods as one of the required meal components;

(4) reimbursement for meals claimed when food production observed or recorded indicate there was not enough food prepared to provide the minimum serving size for the meals claimed for eligible children; food production is calculated using the USDA food buying guide;

(5) reimbursement for meals claimed when there is insufficient, or lack of, documentation to support the quantity and types of foods served;

(6) reimbursement for meals claimed in excess of two main meals and one supplement, or two supplements and one main meal per child, per day;

(7) reimbursement for meals claimed when meal count records do not support the meals claimed, or when any other required documentation to support the meals claimed, is not available;

(8) reimbursement for meals served during unapproved meal time periods;

(9) reimbursement for individual meals claimed in excess of recorded attendance or authorized capacity;

(10) reimbursement for all meals claimed for any month by for-profit Title XX centers when less than 25 percent of enrolled participants are Title XX beneficiaries or eligible for free or reduced price meals.

C. Disallowed claims for sponsoring organizations of day care homes include the following:

(1) reimbursement paid for meals served to ineligible children;

- (2) reimbursement paid for ineligible meals or meals served during unapproved time periods;
- (3) reimbursement paid for meals served that do not follow the USDA meal pattern as described in 7 CFR 226.20, and the state agency non creditable foods list;
- (4) reimbursement for meals served to children not properly enrolled;
- (5) reimbursement paid for meals served to providers' own children without current and complete income eligibility applications on file;
- (6) reimbursement paid for meals at Tier 1 rates to providers who are incorrectly classified as Tier 1; the difference between Tier 1 and Tier 2 reimbursement paid to providers, is considered an over payment;
- (7) reimbursement paid for meals at Tier I rates served by Tier II providers who do not have adequate Tier I eligibility documentation for non resident children.

D. Sponsoring organizations of day care homes shall recover payments from family day care home providers for the following disallowed claims:

- (1) failure to maintain daily menu and attendance records;
- (2) claiming meals when eligible enrolled children are not present;
- (3) claiming meals which do not meet meal pattern requirements;
- (4) claiming more than 2 main meals and a snack or two snacks and a main meal per child per day;
- (5) claiming provider's own children when non resident children are not present at the meal service;
- (6) program participants not found at the family day care home during stated hours of care on two consecutive visits; in

such cases, the sponsoring organization shall dis-enroll these participants from the program and shall disallow any future claims concerning such participants until the sponsor verifies attendance.

E. Sponsoring organizations of family day care homes shall notify providers of disallowed claims and afford an opportunity for an administrative review in accordance with 7 CFR Part 226.6(1)(2).

[8.2.2.15 NMAC - Rp, 8 2.2.15 NMAC, 06-15-09]

#### **8.2.2.16 INSTITUTION OPERATIONAL PROVISIONS:**

A. Each institution is solely responsible for the administrative and financial management of the program, including the actions of their employees. Institutions may not use independent contractors to manage the program.

B. Each institution shall provide adequate supervisory and operational personnel for monitoring and management of the program.

C. Each institution shall establish procedures to collect and maintain all necessary program records as described in the Code of Federal Regulations, 7 CFR 226.15 e(1), (3), (4), (7), (8), (9), (10), (11), and (12).

D. Sponsoring organizations of day care homes shall maintain their provider, participant, meal attendance, monitoring visits and claim payment records in an electronic format using a state agency approved computer data base program. Sponsors submit their data electronically on a regular basis and as requested by CYFD in a format compatible with CYFD's electronic data base program.

E. Each institution shall maintain appropriately staffed offices and phone lines for access by program clients and CYFD staff.

[8.2.2.16 NMAC - Rp, 8.2.2.16 NMAC, 06-15-09]

#### **8.2.2.17 SPONSORING ORGANIZATION PROVISIONS:**

A. Sponsoring organizations of day care homes shall monitor the program at all day care homes under their respective jurisdiction according to requirements in 7 CFR 226.16(d) (1), (2), (3), and (4). Additionally, sponsors are required to review each day care home participating with the organization at least four times during the provider's application year and follow the review elements and reconciliation of meal count requirements listed in 7 CFR 226.16(d)(4)(i-ii).

B. Sponsoring organizations of day care homes shall maintain information concerning dates and amount of disbursement to each day care home and information concerning the dates and location of each day care home review.

C. Sponsoring organizations of day care homes shall provide payments of claim reimbursement funds to their day care home providers within five working days of receipt of funds from CYFD.

D. Sponsoring organizations of day care homes shall maintain their data on providers, program participants, monitoring visits, meal attendance and claim payments made to providers, in a child and adult care food program software system approved by CYFD in order to provide consistent data reporting. Sponsoring organizations of day care homes shall respond to CYFD inquiries regarding possible duplicate participants or providers, and any other program integrity questions in a timely manner.

E. Sponsoring organizations of child care and adult day care facilities shall provide adequate supervision and monitoring of the program at all child care and adult day care facilities under their jurisdiction and according to 7 CFR Part 226.16(d).

[8.2.2.17 NMAC - Rp, 8.2.2.17 NMAC, 06-15-09]

#### **8.2.2.18 REQUIREMENTS FOR MEALS:**

A. Each meal served in the program shall comply with USDA meal patterns as outlined in federal regulations 7 CFR Part 226.20 and with the CYFD creditable foods list.

(1) Non-creditable foods shall not be used to meet the meal pattern component requirement. Some foods which are non-creditable include but are not limited to: hot dogs, doughnuts, and processed lunch meats that do not appear in the USDA food buying

guide or do not have a child nutrition (CN) label. All items which are listed as “not reimbursable” or “not allowable” on the non creditable list supplied by CYFD are not reimbursable, and their purchase price is subtracted from total food costs by CYFD review staff during program and other on site reviews.

(2) Infants shall be provided meals which follow USDA meal pattern for infants. The provider/center is responsible for providing one milk or soy-based house formula only. The parent shall be notified in writing of the availability of this formula. If the parent elects to have the center/provider use a different formula which the parent provides, the infant may still be claimed for reimbursement. Care givers may not deviate from the infant meal pattern without a doctor’s written statement which specifies what foods to allow or not allow for the individual infant.

B. Special dietary needs and requirements of children shall be met. Special dietary needs include, but are not limited to, diabetic diets, high calorie, lower calorie, mechanically altered, and substitutions for food allergies or intolerance. Special dietary needs shall be expressed in an order from a medical authority which specifies any texture modifications, foods to be eliminated and which foods to substitute for the eliminated food, and other diet modifications. They do not include enteral or parenteral formulas which may be covered by medical insurance or medicare/medicaid.

C. Child nutrition (“CN”) labeled products are not required for CACFP programs, and do not necessarily meet the meal requirements for CYFD’s creditable foods list. Combination food items purchased which do not have a CN label must have a product analysis sheet from the manufacturer.

D. Family style meal service (“FSMS”) or a modified version thereof, where all required components of the meal are placed on the table at the start of the meal and children are encouraged to take a portion from each meal component, is required at all participating centers and homes, unless there is a documented reason why FSMS cannot be implemented.

E. Institutions, with the exception of family day care homes, shall document on a daily basis the type and production elements of meals served in the menu record book which is provided by CYFD at the time of program approval.

(1) Family day care home providers document on a daily basis the types and number of meals served to enrolled children on an approved attendance sheet.

(2) Meals served by family day care home providers, including components, are recorded on the menu records which are approved by CYFD and provided by the sponsoring organization.

(3) Family day care home providers are not required to document quantities served, but are required to offer at least the minimum required portion size of each component for each meal.

(4) Family day care home providers are required to specify the times when approved meals are regularly served. Meal service is required to begin within fifteen minutes before or after the specified meal times as documented on the provider-sponsor agreement.

[8.2.2.18 NMAC - Rp, 8.2.2.18 NMAC, 06-15-09]

#### **8.2.2.19 FOOD SERVICE MANAGEMENT COMPANIES:**

A. Institutions which contract with a food service management company remain responsible for ensuring that the food service operation conforms to all requirements herein.

B. All procurement of meals from food service management companies shall adhere to the procurement standards set forth in 7 CFR 226.22, Procurement Standards.

C. Institutions with program meal contracts of an aggregate value in excess of \$10,000 shall formally advertise such contracts and comply with the federal procedures in 7 CFR 226.21(a)(1-8), which are intended to prevent fraud, waste and program abuse.

D. The institution and the food service management company shall enter into a standard contract as required in 7 CFR 226.6(I).

E. The institution shall submit to CYFD a copy of its contract with the food service management company prior to the beginning of program operations under the subject contract.

F. Proposed additional provisions to the standard contract are submitted to CYFD for approval.

[8.2.2.19 NMAC - Rp, 8.2.2.19 NMAC, 06-15-09]

#### **8.2.2.20 FREE AND REDUCED-PRICE MEALS:**

A. Each institution shall submit to CYFD, at the time it applies for program participation, a written policy statement concerning free and reduced-price meals to be uniformly used in all child care and adult day care facilities under its jurisdiction.

B. Institutions are not approved for participation unless CYFD approves the free and reduced price policy statement. CYFD provides the free and reduced price policy statement with each initial application.

C. Each institution annually shall provide a public release to the local media to inform the public of the program’s availability.

(1) For all institutions, other than sponsoring organizations of day care homes, the public release shall include the USDA income eligibility guidelines for free and reduced-price meals.

(2) The public release issued by sponsoring organizations of day care homes shall include the USDA income eligibility guidelines for reduced-price meals.

(3) The public release issued by all institutions shall announce the availability of meals at no separate charge and state that meals are available to all participants without regard to race, color, national origin, sex, age or disability.

D. All institutions, other than sponsoring organizations of day care homes, distribute applications for free and reduced-price meals to the families of participants enrolled in the institution.

(1) Sponsoring organizations of day care homes distribute free and reduced-price applications to day care home providers who wish to enroll their own children in the program and, upon request, to parents of children in Tier 2 homes wishing to receive Tier 1 rates.

(2) Applications for free and reduced price meals are made available by CYFD. Institutions shall complete the applications according to 7 CFR Part 226.23(e)(1) and Parts 226.23 (j), (k), (l), (m) and (n).

(3) Completed applications for free and reduced-price meals are valid for 12 months and shall be completed annually.

(4) Free and reduced price applications shall include:

(a) names of all household members;

(b) the signature of an adult member of the household;

(c) social security number of the adult household member signing the application or an indication that the adult household member does not possess one;

(d) household income received by each household member, identified by source of income (such as earnings, wages, pensions, support payments, unemployment compensation, and social security) and total household income.

(5) For a child who is a TANF recipient or a member of a food stamp or FDPIR household only the following is required:

(a) the name(s) and appropriate TANF, food stamp or FDPIR case number(s);

(b) the signature of an adult member of the household;

(c) the name(s) of the enrolled child(ren).

(6) 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, the following is required:

(a) the name(s), appropriate case number(s) (if the program utilizes case numbers), and the name(s) of the qualifying program(s) for the child(ren), and the signature of an adult member of the household; or

(b) if the sponsoring organization or day care home possesses it, official evidence of the household's participation in a qualifying program (submission of a free and reduced price application by the household is not required in this case).

(7) For a child who participates in head start, only the official head start enrollment document which certifies that the child is eligible based on income guidelines, is required.

(8) 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, only the following is required:

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

(b) the signature of an adult member of the household.

(9) Additional documentation requirements for Tier 1 classifications as required in 7 CFR Part 226.15(f).

E. Institutions shall distribute a letter to households or guardians of enrolled participants in order to inform them of the procedures regarding eligibility for free and reduced-price meals.

[8.2.2.20 NMAC - Rp, 8.2.2.20 NMAC, 06-15-09]

#### **8.2.2.21 VERIFICATION OF PROVIDER ELIGIBILITY:**

A. CYFD verifies eligibility for free and reduced-price meals on an annual basis, in accordance with federal regulations 7 CFR 226.23(h).

B. Sponsoring organizations of family day care homes are responsible for verifying the income eligibility for providers who are classified as Tier 1 based on household income.

[8.2.2.21 NMAC - Rp, 8.2.2.21 NMAC, 06-15-09]

#### **8.2.2.22 OTHER NUTRITION PROVISIONS:**

A. CYFD provides nutrition education and training to all institutions and participants as an integral part of the child and adult care food program administration in New Mexico.

(1) Nutrition education activities shall be conducted by center staff in child care centers on a monthly basis. Center staff shall document these activities on CYFD forms and maintains such forms for CYFD's review.

(2) Family day care home providers are encouraged to provide nutrition education activities to children as part of their developmentally appropriate program.

B. Centers and family day care home providers are discouraged from utilizing disposable dishes and plastic ware at meal services.

C. CYFD annually reviews a sample of center menus to ensure nutritional quality and variety of meals served.

(1) Menu reviews which identify significant poor quality or lack of variety may require the center to utilize CYFD menus or to contract for services with a licensed or registered dietician/nutritionist to correct the deficient menus.

(2) CYFD provides sample menus to assist participating centers in providing varied and nutritious meals.

[8.2.2.22 NMAC - Rp, 8.2.2.22 NMAC, 06-15-09]

**HISTORY OF 8.2.2 NMAC:**

**History of Repealed Material:**

8 NMAC 2.2, Requirements for Participation in the Child and Adult Care Food Program, filed 5-27-1999 - Repealed effective 11-30-2001

8.2.2 NMAC, Requirements for Participation in the Child and Adult Care Food Program, filed 11-16-2001 - Repealed effective 06-15-2009