



Billing Code: 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

[FNS-2018-0009]

RIN 0584-AE59

Increasing Flexibility for Verification of For-Profit Center Eligibility in the Child and Adult Care Food Program

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: USDA proposes a deregulatory action to simplify the requirement for for-profit child care centers, for-profit adult care centers, and sponsoring organizations of for-profit centers in the Child and Adult Care Food Program to verify that they are eligible to submit claims for reimbursement each month. This rule would exempt for-profit centers from monthly verification if they annually demonstrate that at least 50 percent of children served are eligible for free and reduced-price meals or benefits under title XX of the Social Security Act, or at least 50 percent of adult participants are eligible for benefits under title XIX or title XX of the Social Security Act. Monthly verification represents a small but duplicative paperwork burden. Allowing a less frequent verification cycle would reduce the administrative burden for those centers that consistently serve a high percentage of eligible children or adult participants from low-income households.

DATES: Written comments must be received on or before [insert date 60 days after date of publication in the Federal Register] to be assured of consideration.

ADDRESSES: USDA invites interested persons to submit written comments on this proposed rule, including the information collection. Comments may be submitted in writing by one of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Send comments to Community Meals Branch, Policy and Program Development Division, USDA Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.
- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the written comments publicly available via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Andrea Farmer, Chief, Community Meals Branch, Policy and Program Development Division, USDA Food and Nutrition Service, 703-305-2590.

SUPPLEMENTARY INFORMATION:

I. Overview

USDA is committed to working with States to highlight flexibilities and local choices that would both ensure that the Child and Adult Care Food Program (CACFP) operates with integrity and alleviate unnecessary regulatory burdens, such as the monthly verification required of private for-profit centers that serve a high percentage of eligible

children or adult participants from low-income households. To be eligible to claim reimbursement for meals and snacks served in CACFP, for-profit centers must document that they meet specified criteria, which demonstrates that at least 25 percent of children or adult participants in care are from low-income households. This proposed rule would simplify the requirement for some for-profit child and adult care centers and sponsoring organizations of for-profit centers to verify that the 25 percent standard is met. It would allow a less frequent verification cycle, from monthly to annual verification, in those centers where low-income children or adult participants make up a large proportion of the enrollment. This rule proposes to make the following amendments to CACFP regulations:

1. At 7 CFR 226.10(c), exempt for-profit child or adult care centers from re-verifying their eligibility on monthly claim forms if they annually meet the criteria for for-profit centers to demonstrate that at least 50 percent of children or adult participants in care are from low-income households.
2. At 7 CFR 226.6(f), make verification of eligibility of participating for-profit institutions an annual State agency responsibility.
3. At 7 CFR 226.9(b) and 226.11(c), allow State agencies to use free and reduced-price counts to support the annual eligibility determination for for-profit centers that are assigned claiming percentages or blended rates of reimbursement, when the 50 percent standard is met.

II. Background

CACFP, authorized under section 17 of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1766, supports the efforts of public, private non-profit, and private for-profit child care centers, outside school-hours-care centers, and adult day care centers to

provide nutritious foods that contribute to the wellness, healthy growth, and development of young children and the health and wellness of older and chronically impaired adults. Independent public and private non-profit centers and sponsoring organizations of centers submit claims to the State agency for reimbursement each month, based on the number of meals served to eligible children or adult participants and their eligibility for free and reduced-priced meals. However, the claiming process is not as simple for independent for-profit centers and sponsoring organizations of for-profit centers. The Omnibus Reconciliation Act of 1981, Public Law 97-35, established a legislative standard of participation for for-profit centers that would reduce spending and target benefits to low-income children. Consequently, for-profit centers must meet additional criteria and verify each month that they are eligible to submit claims for reimbursement.

Based on informal input from CACFP stakeholders, USDA understands that for-profit centers that have to report information to verify monthly eligibility on their claim forms find it to be an unnecessary administrative burden, particularly for centers where low-income children or adult participants make up a greater proportion of the enrollment.

USDA has been working with State agencies and local partners to examine administrative requirements and explore recommendations for reducing unnecessary paperwork and easing the burden of those requirements.

In 2011, USDA formed the Paperwork Reduction Work Group to explore ways to streamline CACFP. The Work Group consisted of a representative panel of CACFP professionals from State and local agencies and national associations, as well as experts in early childhood education and care, nutrition, and technology to help USDA understand how to make operational requirements more efficient, without compromising

the measures we have taken to protect program integrity. Recommendations from the Work Group were included in a report, *Reducing Paperwork in the Child and Adult Care Food Program*, which was submitted to Congress in August 2015.

The Work Group found it confusing and burdensome that CACFP regulations under 7 CFR 226.2 and 226.6 require for-profit centers to verify their eligibility in their applications and then, under 7 CFR 226.10, require for-profit centers to re-verify their eligibility to participate and submit claims for reimbursement each month. The Work Group reasoned that centers do not experience large variability in the percentage of enrollment or licensed capacity and that submitting monthly documentation results in a disproportional amount of work for any center that serves a high number of low-income children or adult participants. To address this paperwork burden, the Work Group considered several recommendations regarding eligibility verification and payments, including proposals to:

- Establish annual eligibility determinations for for-profit centers serving high numbers of low-income children;
- Eliminate requirements to submit monthly backup documentation of attendance, income eligibility forms, or title XX participation;
- Establish a single, blended-rate method of payment, determined annually for centers;
- Compute the blended rates of payment for centers based on an individual center's enrollment; and
- Allow centers the option of amending the rate more frequently than annually.

The report's recommendations urged USDA to work with State agencies to streamline the annual eligibility determinations for participating for-profit centers meeting a 50 percent standard, and eliminate requirements to submit monthly backup documentation of children or adult participants' attendance or eligibility for meal benefits to verify that the 25 percent standard is met. The report also proposed recommendations on the assignment of rates of reimbursement, reflecting the Work Group's broader concerns about the paperwork burden placed on any center, not just for-profit centers, and on sponsoring organizations of centers when payment rates must be re-evaluated monthly. Instead of basing payments on the actual number or a claiming percentage of meals served free, at a reduced-price, or at the paid rate, the report asked State agencies to consider updating computer systems to move toward an annual blended payment rate, based on an individual center's enrollment, and allowing centers the option of amending the rate more frequently than annually.

Through this deregulatory action, USDA proposes to address the verification issue in the report by streamlining reporting requirements of for-profit centers and sponsoring organizations of for-profit centers that meet a 50 percent standard. In those centers where low-income children or adult participants make up a large proportion of the enrollment, the number of times eligibility must be verified would be reduced from monthly to annually.

This rule would exempt for-profit child or adult care centers from re-verifying their eligibility to submit claims each month, if they annually meet the criteria for for-profit centers to demonstrate that at least 50 percent of children or adult participants in care are from low-income households. The 50 percent standard is consistent with the Paperwork

Reduction Work Group's recommendation and adopts a benchmark that has been applied by Congress to define low-income areas and determine eligibility in CACFP for streamlined reimbursements for non-profit centers. Corresponding changes would make verification of eligibility of participating for-profit institutions an annual State agency responsibility and provide options that would allow the State agency to use separate free and reduced-price counts that support the for-profit eligibility determination to assign each for-profit center an annual claiming percentage or blended rate.

The amendments proposed in this rule would not change fundamental CACFP requirements. USDA's intent is to find reasonable ways to ease CACFP operational burdens, through State flexibilities and options for child and adult care institutions that would make it easier to demonstrate and verify compliance with for-profit center requirements. For example, this rule would not change the 25 percent standard for application approval or the criteria to verify that each for-profit center is eligible to submit claims for reimbursement. Every for-profit center must continue to meet the 25 percent standard in order to be eligible to claim reimbursement each calendar month. No claims for reimbursement may be paid for meals served at a for-profit center in a calendar month when less than 25 percent of eligible children or adult participants meet this standard.

This rule would also not change the States' responsibilities for the assignment and calculation of rates of reimbursement. To calculate payments for public, private non-profit, and for-profit centers, State agencies receive monthly information from CACFP institutions about the eligibility of children and adult participants. Public and private non-profit institutions will continue to report this information to the State agency each month.

For-profit institutions that do not meet the criteria demonstrating that at least 50 percent of children or adult participants in care are from low-income households would also continue to report eligibility information each month.

More than 65,300 child care centers and 2,700 adult care centers participated in CACFP in 2017, according to USDA administrative data released in April 2018. The numbers represent independent centers and centers that participate under a sponsoring organization, which the data collectively refer to as outlets—the individual child or adult care centers where meals are actually served. Of these outlets, USDA estimates that 18,841, or about 28 percent, were for-profit centers. In North Carolina, Georgia, and Florida, for-profit centers made up over half of the total number of centers.

The changes proposed in this rule would only apply to CACFP institutions—the independent centers and sponsoring organizations that are responsible for CACFP for-profit reporting requirements—not the individual centers that participate under a sponsoring organization. USDA administrative data showed that, in 2017, 9,770 independent for-profit centers and sponsoring organizations of for-profit centers participated in CACFP. Out of this universe of 9,770 for-profit institutions, USDA estimates that this rule would change reporting requirements for 7,920, or about 80 percent.

USDA recognizes that State agencies take different approaches in assigning and computing rates of reimbursement, depending on the structure and capabilities of their automated financial systems and the other technology investments they choose. Some of the options that USDA has considered addressing in this rule, such as allowing eligible for-profit centers to receive the assigned payment rate or submit information to the State

agency to recalculate the rate at other intervals, have raised program integrity issues. Some have also raised concerns about preserving equity among public, private non-profit, and for-profit centers. USDA seeks comments to help determine further changes, particularly from States where for-profit centers make up a significant proportion of CACFP centers. We encourage your comments to help us better understand what the differences in claims processing systems are and how they may impact for-profit institutions differently from public and non-profit centers and sponsoring organizations. It would be especially helpful to know how State administrators and local partners view the Paperwork Reduction Work Group's recommendations for assigning and amending payment rates to centers in CACFP.

Eligibility Determination and Verification

A for-profit center in CACFP is defined under 7 CFR 226.2 as a child care center, outside-school-hours care center, or adult day care center providing nonresidential day care services that does not qualify for tax-exempt status under the Internal Revenue Code of 1986. Claims for reimbursement from, or on behalf of, a for-profit child care center or an outside-school-hours-care center may be submitted only for calendar months during which at least 25 percent of the children in care are eligible for free and reduced-price meals or receive benefits, for which the center receives compensation, under title XX of the Social Security Act. For-profit centers serving adults may submit claims for reimbursement only for calendar months during which at least 25 percent of the adults enrolled in care receive benefits, for which the center receives compensation, under title XIX or title XX of the Social Security Act, or a combination of both.

CACFP payment procedures under 7 CFR 226.10(c) require all for-profit child and adult care institutions to submit information to the State agency to verify their eligibility, for each month in which a for-profit child care center, for-profit outside-school-hours care center, or for-profit adult day care center claims reimbursement. Child care institutions must provide the number and percentage of children in care that documents that at least 25 percent of their enrollment or licensed capacity, whichever is less, is eligible for free and reduced-price meals or receive benefits, for which the center receives compensation, under title XX of the Social Security Act. Adult day care institutions must provide the percentage of enrolled adult participants that documents that at least 25 percent receive benefits, for which the center receives compensation, under title XIX or title XX of the Social Security Act.

USDA proposes several amendments to 7 CFR 226.10(c), including technical changes that would conform 7 CFR 226.10(c) with the codification requirements of the Office of the Federal Register and present the information in paragraph (c) in a clear, concise, yet thorough manner. Programmatically, this rule would exempt new institutions from re-verifying their monthly eligibility if their initial application demonstrates that at least 50 percent of children or adult participants in care are from low-income households.

With an annual eligibility determination, independent for-profit centers and sponsoring organizations of for-profit centers would not be required to re-verify their eligibility on monthly claim forms if the 50 percent standard is met.

However, to be eligible to submit a monthly claim for reimbursement, each institution must also ensure that, if enrollment changes, the center will still meet the criteria for for-profit centers to demonstrate that at least 25 percent of children or adult participants in care are from low-income households. No claims for reimbursement may be paid for meals served at a for-profit center in a calendar month when less than 25 percent of eligible children or adult participants meet this standard. Under this rule, it would be the responsibility of the institution to notify the State agency each month in which reimbursement would not be claimed.

This rule would encourage State agencies to utilize flexibilities that would also ease the administrative burden of State requirements. Based on informal input, USDA understands that in some States, additional paperwork may be requested to verify that a for-profit center meets the 25 percent standard. For example, a State agency may require the sponsoring organization to collect documentation of attendance, income eligibility, or title XIX or title XX participation, from its for-profit centers, with each month's claiming data. Under this rule, no additional submission of information to support the eligibility determination would be necessary if the center's annual for-profit eligibility percentage were 50 percent or greater. The sponsoring organization would check the center's eligibility documentation to verify children or adult participants' attendance or eligibility for meal benefits during a review. The center would not need to submit additional information to the sponsoring organization.

This rule would also exempt renewing institutions if they annually demonstrate that at least 50 percent of the children or adult participants in care are from low-income

households. USDA proposes corresponding changes to make verification of eligibility of participating for-profit institutions an annual State agency responsibility.

USDA has not required renewing for-profit institutions to provide documentation of eligibility because, as a condition of their eligibility, for-profit centers are required to document that the 25 percent standard is met each month. Although the State agency receives this information monthly as part of the claiming process, 7 CFR 226.6(f)(3)(iv) of the regulations allows, but does not require, the State agency to request periodic resubmission of documentation to determine the continued eligibility of renewing centers. This rule would make annual reporting of eligibility information a requirement for all for-profit institutions, and move this provision from 7 CFR 226.6(f)(3)(iv) to the list of responsibilities under 7 CFR 226.6(f)(1).

Accordingly, this rule proposes to make technical changes to 7 CFR 226.10(c). New paragraphs at 7 CFR 226.10(c)(3) and (c)(4) would exempt for-profit child or adult care centers from re-verifying their eligibility to submit claims each month, if they annually meet the criteria for for-profit centers to demonstrate that at least 50 percent of children or adult participants in care are from low-income households. A new paragraph at 7 CFR 226.10(c)(5) would require the institution to notify the State agency each month in which reimbursement would not be claimed if a for-profit center that had verified an annual eligibility percentage of 50 percent or greater did not meet the 25 percent standard. This rule would also add a new paragraph at 7 CFR 226.6(f)(1) to make verification of eligibility of all participating for-profit institutions an annual State agency responsibility.

Assignment and Computation of Rates of Reimbursement

State agencies have three options—actual counts, claiming percentages, and blended per-meal rates—for assigning rates of reimbursement, at 7 CFR 226.9(b), and computing reimbursement, at 7 CFR 226.11(c)(5), for child care centers, outside-school-hours-care centers, and adult day care centers.

State agencies may assign rates of reimbursement, not less frequently than annually, on the basis of family-size and income information reported by each institution. The assigned rates of reimbursement may be changed more frequently than annually if warranted by changes in family size and income information. Annual assignment of rates is a State option, not a requirement.

USDA is not proposing any changes in the assignment or computation of rates of reimbursement when the annual for-profit eligibility percentage is less than 50 percent. The State agency would continue to have the option of assigning rates of reimbursement annually or more frequently than annually for for-profit centers that do not meet the 50 percent standard. However, in States which elect claiming percentages or blended rates, this rule proposes that the State agency assign an annual rate of reimbursement when the 50 percent standard is met. The State agency would use the separate free and reduced-price counts that support each center's annual for-profit eligibility percentage to compute an annual claiming percentage or an annual blended rate. This rule would also provide flexibility, as needed for proper administration of CACFP, to allow the State agency to require a for-profit center to submit information to recalculate the claiming percentage or blended rate more frequently than annually.

These proposed changes are consistent with USDA's long-standing view that State agencies should utilize the flexibilities available in the regulations to simplify CACFP operations. In policy guidance, CACFP 15-2013, *Existing Flexibilities in the Child and Adult Care Food Program*, issued on July 26, 2013, USDA encourages State agencies to annually assign rates of reimbursement for centers.

When reviews disclose serious noncompliance, requiring centers to re-evaluate the claiming percentage or blended rate each month would be an appropriate component of a corrective action plan.

However, for most centers which operate CACFP in good standing, allowing an annually determined claiming percentage or an annually determined blended rate would streamline the eligibility process. It would reduce the number of times the centers have to determine eligibility and provide more transparency for them to understand how they are reimbursed.

Accordingly, this rule proposes to add new paragraphs at 7 CFR 226.9(b)(2) and 226.11(c)(4) for computing rates of reimbursement for for-profit centers in States where claiming percentages or blended rates are assigned, if the center's annual eligibility percentage is 50 percent or greater. The proposed changes would allow State agencies to use the free and reduced-price counts that support the for-profit eligibility determination to assign each eligible for-profit center an annual claiming percentage or annual blended rate, with exceptions when needed for proper program administration.

Public Submission

Public input and assessment, with an opportunity to examine CACFP operations and consider improvements related to this rule, are essential elements of the rulemaking process. We invite the public to submit comments to help USDA gain a better understanding of both the possible benefits and any negative impacts associated with the changes proposed in this rule.

This proposed rule reflects USDA's commitment to work with all of our partners, including State administrators, sponsoring organization leaders, for-profit center operators, advocates, and other CACFP stakeholders to develop innovative strategies to ensure that CACFP requirements are effective and practical.

USDA is actively looking for more information, particularly regarding the Paperwork Reduction Work Group's recommendations for assigning reimbursement rates and USDA's efforts to balance operational flexibilities with improvements in program integrity.

Comments on the economic effects of this rule that include quantitative and qualitative data—such as the public's insights on the occupations responsible for the paperwork and other inputs, which would help USDA prepare benefit cost analyses and narrow down the range of cost savings—are also especially helpful.

Please select those issues that most concern and affect you, or that you best understand, and include examples of how the proposed rule would impact you, positively or negatively. Consider what could be done to foster incentives for flexibility, consistency,

eliminating duplication, ensuring compliance, and protecting program integrity. For example, consider:

- How easily State agency and sponsoring organization financial systems could support the changes;
- What impacts, if any, there would be for State agencies or sponsoring organizations in processing claims for reimbursement;
- How State agency financial systems could impact for-profit institutions differently from other types of institutions;
- How compliance would be monitored;
- How likely it would be for a for-profit center to drop below the 25 percent standard, after the center verified an annual eligibility percentage of 50 percent;
- How the State agency or sponsoring organization would determine that a for-profit center dropped below the 25 percent standard, after the center had verified an annual eligibility percentage of 50 percent, and how the claiming process would be impacted;
- What flexibilities, if any, there could be for for-profit centers that fall below the 50 percent standard, but above the 25 percent standard;
- What impacts there would be if for-profit centers could request the State agency to amend the claiming percentages or blended rates more frequently than annually;

- How participation could be impacted if for-profit centers have the option of submitting information to the State agency to amend the claiming percentages or blended rates more frequently than annually; and
- How, or if, the changes proposed in this rule would make CACFP more efficient and easier to manage.

We welcome your ideas for improving CACFP and ways that USDA can serve you better. USDA will carefully consider all relevant comments submitted during the 60-day comment period for this rule. Comments may be submitted as outlined in “Addresses.”

PROCEDURAL MATTERS

Executive Order 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposed rule was initially determined to be significant and was reviewed by the Office of Management and Budget (OMB). On July 24, 2018, OMB changed the designation to not significant. Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled

through a budgeting process. FNS considers this rule to be an Executive Order 13771 deregulatory action.

Economic Summary

A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100 million or more in any one year). USDA does not anticipate that this proposed rule is likely to have an economic impact of \$100 million or more in any one year, and therefore, does not meet the definition of “economically significant” under Executive Order 12866. The changes proposed in this rule would result in a small amount of administrative savings from reducing the monthly reporting requirements to once a year.

The proposed changes are not expected to increase CACFP costs.

The proposed rule decreases the estimated annual staff time required to do the reporting by 5.5 hours per year per center. According to the Paperwork Reduction Act section of this rule, the number of estimated annual responses per center decreases from 12 to 1. At 30 minutes per response, this is a decrease of 5.5 staff hours per center per year. It is highly unlikely that saving 5.5 hours of staff time per year would provide sufficient incentive to induce additional eligible centers to participate if those centers are not already participating in CACFP. USDA does not estimate that there would be any change in center participation, or any changes to any other costs associated with CACFP, resulting from this proposed rule.

While the changes proposed in this rule impact for-profit institutions, which are responsible for the reporting requirements, it is important to get a sense of how many for-

profit outlets—the individual child or adult care centers where the meals are actually served—would meet the 50 percent standard, and how it would impact the decision to participate in CACFP. Administrative data collected by USDA does not contain outlet-level information needed to assess the potential impact of this proposed rule to participation. USDA obtained informal outlet-level information from a number of States to analyze. The data contained the number of for-profit outlets and the percent of eligible participants as well as two separate months of information to evaluate the potential monthly volatility of the eligibility percentages in for-profit outlets. These States represent a variety of sizes and regions and account for roughly 40 percent of the total number of for-profit outlets in Fiscal Year (FY) 2017.

The majority of for-profit outlets in the State data had annual eligibility percentages of 50 percent or more. The percent of for-profit outlets with an annual eligibility percentage of 50 percent or more ranged from 60 percent of the total number of for-profit outlets to over 90 percent of the total number of for-profit outlets. The data demonstrate that the majority of for-profit outlets continue to participate in CACFP because the number of eligible children and adult participants make it financially viable. While this rule would create administrative efficiencies, it is unlikely that the proposed changes would provide the incentive for more outlets with an annual eligibility percentage of 50 percent to participate in CACFP.

USDA also reviewed the State data to gain a sense of the distribution of the percentages of eligible participants in for-profit outlets that would meet or exceed the proposed 50 percent standard. The average percentage of eligible participants was between 70 percent and 90 percent for those sites meeting or exceeding the standard across all eight States.

The average percent of eligible participants in sites not meeting the standard was above 35 percent. This indicates that, not only do the majority of for-profit outlets meet the 50 percent standard, but on average, outlets serve a much higher percentage of eligible participants.

The likelihood of outlets falling below the proposed 50 percent threshold would be very low. To better understand how many outlets may potentially fall below the 50 percent standard, USDA reviewed the State data to determine the number of for-profit outlets that have eligibility percentages between 50 percent and 55 percent.

Overall, about 6 percent of outlets (about 300) had eligibility percentages that fell within this range. The individual States ranged from less than 1 percent to slightly more than 10 percent. Likewise, the number of outlets falling between 45 percent and 50 percent were slightly less, with only about 4 percent (about 200) of the for-profit outlets in the eight States falling in this range.

The monthly variation in the percentage of for-profit outlets that meet the 50 percent standard is relatively small. Overall, there was an increase of about 1 percent in the number of for-profit outlets meeting the proposed 50 percent threshold from July to September 2017.

The high percentages of eligible participants, along with the large numbers of for-profit outlets meeting the proposed 50 percent standard, indicate that the impact of the proposed changes in this rule would be largely administrative. The changes aim to increase efficiencies, but are not projected to impact CACFP participation and costs.

Based on this evidence, USDA estimates that the only savings associated with this proposed rule would be a decrease in annual reporting burden on existing for-profit institutions. There were 9,770 independent for-profit centers and sponsoring organizations of for-profit centers participating in CACFP in FY 2017, according to USDA administrative data. USDA estimates about 80 percent of for-profit institutions would be impacted by this rule and would experience a reduction in burden. This percentage allows for some sponsoring organizations that do not have outlets meeting the proposed 50 percent standard.

The data provided by the States indicate that the majority of outlets exceed the proposed 50 percent standard, making it very likely that the vast majority of sponsors contain at least one outlet meeting or exceeding the standard.

As described in the Paperwork Reduction Act section of this rule, the reporting burden for these institutions would be 43,559 hours. Depending on whether one assumes that an administrative assistant or the center director or submits these reports, this decrease would result in an annualized estimated savings of \$1.3 million (assuming administrative assistants submit the reports) to \$2.2 million (assuming center directors submit the reports), each year from FY 2019 through FY 2023.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial

number of small entities. This rule would exempt for-profit centers from re-verifying their eligibility to submit claims each month, if they annually meet the criteria for for-profit centers that consistently serve a high number of children or adult participants from low-income households. This rule is a deregulatory action that would not impact a substantial number of small entities. USDA estimates that 28 percent of centers participating in CACFP are for-profit.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector.

Under Section 202 of UMRA, USDA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates, under the regulatory provisions of title II of UMRA, for State, local, and tribal governments, or the private sector, of \$100 million or more in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12372

CACFP is listed in the Assistance Listings under the Catalog of Federal Domestic Assistance (CFDA) Number 10.558 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Since the Child Nutrition Programs are State-administered, USDA has formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding CACFP requirements and operation. This provides USDA with the opportunity to receive regular input from State administrators and local CACFP operators, which contributes to the development of feasible requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section 6(b)(2)(B) of Executive Order 13132. USDA has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rulemaking, when published as a final rule, is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This

rulemaking is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of a final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on CACFP participants on the basis of age, race, color, national origin, sex, or disability. After a careful review of the rule’s intent and provisions, USDA has determined that this rule would not be expected to limit or reduce the ability of protected classes of individuals to participate as CACFP operators or as recipients of CACFP meal benefits. USDA also would not expect this rule to have any disparate impacts on CACFP operators by protected classes of individuals.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. A consultation with Indian Tribal Organizations took place on March 14, 2018. USDA proposes this deregulatory action to encourage existing for-profit centers, including for-profit child care, outside-school-hours care, and adult day care centers in Indian country, to continue to participate in CACFP, and maintain access to nutritious meals for eligible

children and adult participants. USDA anticipates that this action would have no significant cost and no major increase in regulatory burden on tribal organizations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 and 5 CFR 1320, requires OMB to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule contains an information collection requirement that has been approved by OMB under OMB Control Number 0584-0055.

This is a revision to an existing collection: Child and Adult Food Care Program, OMB Control Number 0584-0055. This change is contingent upon OMB approval under the Paperwork Reduction Act of 1995.

When the information collection requirement has been approved, FNS will publish a separate action in the Federal Register announcing OMB's approval. Comments on this proposed rule must be received by **[Insert date that is 60 days from publication in the Federal Register]**.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the

methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notification will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: 7 CFR Part 226, *Increasing Flexibility for Verification of For-Profit Center Eligibility in the Child and Adult Care Food Program.*

OMB Number: 0584-0055

Expiration Date: February 29, 2020

Type of Request: Revision

Abstract: This is a revision of an existing information collection associated with 7 CFR Part 226, OMB Number 0584-0055, based on this rulemaking. USDA proposes to modify regulatory requirements for for-profit institutions in the Child and Adult Care Food Program (CACFP) to provide information verifying their eligibility to submit claims for reimbursement each month.

Under this proposed rule for-profit centers, institutions that annually demonstrate that at least 50 percent of children or adult participants in care are from low-income households would be exempt from monthly verification.

By reducing the frequency of verification, this rule would modestly reduce the reporting

burden for eligible for-profit centers and sponsoring organizations of for-profit centers.

There would be no change in reporting burden for for-profit centers that do not meet the 50 percent standard. This rule would also not affect reporting requirements for public and non-profit institutions.

The CACFP information collection, approved with a nonsubstantive change on August 31, 2018, includes a reporting requirement under 7 CFR 226.10(c) for sponsoring organizations and other institutions to submit documentation to verify the eligibility of for-profit centers. USDA estimates that 9,770 for-profit institutions each provide 12 reports annually, for a total of 117,240 responses. The estimated average number of burden hours per response is 0.50, resulting in an estimated total of 58,620 burden hours.

The program change proposed in this rule would only impact for-profit institutions that meet the 50 percent standard. USDA estimates a subset of 1,850 for-profit institutions, or about 20 percent of the 9,770 institution respondents that would not meet this standard, would each continue to provide 12 reports annually, for a total of 22,203 responses. Their reporting burden would not change.

The estimated average number of burden hours per response is 0.50, resulting in an estimated total of 11,101 burden hours.

However, a larger subset of 7,920 for-profit institutions, or about 80 percent of the 9,770 institution respondents, would meet the 50 percent standard.

Each respondent would be exempt from monthly verification and would provide only one report annually for a total of 7,920 responses. The number of estimated responses from

each eligible institution would decrease from 12 responses to only one per year. The estimated average number of burden hours per response is 0.50, resulting in an estimated total of 3,960 burden hours. The estimated total number of burden hours would be reduced by 43,559 hours, from 58,620 to 15,061.

This rule would not require any additional reporting of eligibility information from any for-profit institution, nor would it impose any changes in recordkeeping requirements. Although this rule would ease administrative burden for institutions that may have to report information requested by the State agency to support the eligibility determination, the collection of information under the Paperwork Reduction Act only addresses estimates of federally-imposed reporting or recordkeeping requirements. Due to rounding, our estimates may not match to totals. Here is a summary of our analysis:

Respondents: For-Profit Institutions

Estimated Number of Respondents: 7,920

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Responses: 7,920

Estimated Time per Response: 0.50

Estimated Total Annual Burden: 3,960

Current OMB Inventory (Reporting): 1,870,412

Current OMB Inventory (Reporting and Recordkeeping): 2,481,136

OMB Inventory with Proposed Rule (Reporting and Recordkeeping): 2,437,577

Difference in Burden as a Result of the Proposed Rule: -43,559

7 CFR Part 226 Child and Adult Food Care Program					
Sponsors and Institutions (Currently Approved)					
Requirement	Estimated number of respondents	Number of responses per respondent	Total annual responses	Estimated total hours per response	Estimated total burden
226.10(c): All for-profit institutions submit documentation to verify for-profit center eligibility	9,770.00	12.00	117,240.00	0.50	58,620.00
Total Sponsor/Institution reporting burden	21,052.00	31.88	671,048.00	0.92	616,697.18
Total reporting burden for 0584-0055	2,828,158.00	2.57	7,276,600.84	0.26	1,870,411.75

*Some totals may not add due to rounding.

7 CFR Part 226 Child and Adult Food Care Program					
Sponsors and Institutions (With Proposed Changes)					
Requirement	Estimated number of respondents	Number of responses per respondent	Total annual responses	Estimated total hours per response	Estimated total burden
226.10(c): For-profit institutions that would not be exempt from monthly verification submit documentation to verify for-profit eligibility	1,850.24	12.00	22,202.86	0.50	11,101.43
226.10(c): For-profit institutions that would be exempt from monthly	7,919.76	1.00	7,919.76	0.50	3,959.88

7 CFR Part 226 Child and Adult Food Care Program					
Sponsors and Institutions (With Proposed Changes)					
Requirement	Estimated number of respondents	Number of responses per respondent	Total annual responses	Estimated total hours per response	Estimated total burden
verification					
Total Sponsor/Institution reporting burden	21,052.00	27.74	583,930.62	0.98	573,138.49

*Some totals may not add due to rounding.

7 CFR Part 226 Increasing Flexibility for Verification of For-Profit Center Eligibility in the Child and Adult Care Food Program					
Total Reporting					
Affected public	Estimated number of respondents	Number of responses per respondent	Total annual responses	Estimated total hours per response	Estimated total burden
State Agency	56.00	552.16	30,921.00	0.14	4,200.92
Sponsor/Institution	21,052.00	27.74	583,930.62	0.98	573,138.49
Facilities	180,740.00	12.00	2,168,880.00	0.41	883,761.00
Household	2,626,310.00	1.68	4,405,751.84	0.08	365,752.64
Total reporting burden for 0584-0055	2,828,158.00	2.54	7,189,483.46	0.25	1,826,853.06
Total Recordkeeping					
State Agency	56.00	27.00	1,512.00	1.37	2,072.00
Sponsor/Institution	21,052.00	9.22	194,196.00	0.34	66,432.00
Facilities	180,740.00	3.00	542,220.00	1.00	542,222.00
Total recordkeeping burden for 0584-	201,848.00	3.66	737,928.00	0.83	610,724.00

7 CFR Part 226 Increasing Flexibility for Verification of For-Profit Center Eligibility in the Child and Adult Care Food Program					
0055					
Total of Reporting and Recordkeeping					
Reporting	2,828,158.00	2.54	7,189,483.46	0.25	1,826,853.06
Recordkeeping	201,848.00	3.66	737,928.00	0.83	610,724.00
Total	3,030,006.00	2.62	7,927,411.46	0.31	2,437,577.06

*Some totals may not add due to rounding.

E-Government Act Compliance

USDA is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 226

Accounting, Day care, Food assistance programs, Grant programs, Grant programs-health, Infants and children, Reporting and recordkeeping requirements

Accordingly, 7 CFR part 226 is proposed to be amended as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for 7 CFR part 226 continues to read as follows:

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

2. In § 226.6:

- a. Add a new paragraph (f)(1)(x).
- b. Remove paragraphs (f)(3)(iv)(D) and (E).
- c. Redesignate paragraphs (f)(3)(iv)(F) and (G) as paragraphs (f)(3)(iv)(D) and (E).

The addition reads as follows:

§226.6 State agency administrative responsibilities.

* * * * *

(f) * * *

(1) * * *

(x) Comply with the following requirements for determining the eligibility of for-profit centers:

(A) Require for-profit child care institutions to submit documentation on behalf of their centers of:

(1) Eligibility of at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) for free or reduced-price meals; or

(2) Compensation received under title XX of the Social Security Act of nonresidential day care services and certification that at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) were title XX beneficiaries during the most recent calendar month;

(B) Require for-profit adult care centers to submit documentation that they are currently providing nonresidential day care services for which they receive compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants in each such center, during the most recent calendar month, were title XIX or title XX beneficiaries;

* * * * *

3. In §226.9:

a. Redesignate paragraphs (b)(1), (b)(2), and (b)(3), as paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii), respectively. Redesignate the introductory text in paragraph (b) as paragraph (b)(1) and add the paragraph heading “Reimbursement methods.”

b. Add a new paragraph (b)(2).

The addition reads as follows:

§226.9 Assignment of rates of reimbursement for centers.

* * * * *

(b)* * *

(2) Options for for-profit centers.

(i) In States where the State agency has elected the methods described under paragraphs (b)(1)(ii) or (b)(1)(iii) of this section, the State agency uses the free and reduced-price counts that support each center’s annual for-profit eligibility percentage, if it is 50 percent or greater, to assign an annual claiming percentage or an annual blended per-meal rate.

(ii) The State agency may require a for-profit center to submit information to recalculate the claiming percentage or blended rate more frequently than annually, as needed for proper administration of the Program.

* * * * *

4. In § 226.10:

a. In paragraph (a), remove the reference “§226.6(f)(3)(iv)(F)” and add in its place the reference “§226.6(f)(3)(iv)(D)”.

b. Revise paragraph (c).

The revision reads as follows:

§226.10 Program payment procedures.

* * * * *

(c) Claims for reimbursement.

(1) Each institution must report information required by the State agency’s financial management system. This information must have sufficient detail to justify the claim for reimbursement and enable the State agency to complete the final Report of the Child and Adult Care Food Program (FNS-44) required under §226.7(d) of this part.

(2) In submitting a claim for reimbursement, each institution must certify that the claim is correct and that records are available to support it.

(3) For each month in which reimbursement is claimed, each independent for-profit child care center, independent for-profit outside-school-hours care center, and sponsoring organization of for-profit centers must also certify that at least 25 percent of children in

care (enrolled or licensed capacity, whichever is less) are eligible for free or reduced-price meals or receive title XX benefits.

(i) Claims for reimbursement may be submitted only for months in which the 25 percent standard for participation of eligible children is met.

(ii) Children who drop in only to participate in afterschool activities and receive at-risk afterschool meals or snacks must not be considered in determining this standard.

(iii) Reimbursement may not be claimed for any meals served at a for-profit center when less than 25 percent of children in care meet this standard.

(iv) If the center's annual for-profit eligibility percentage is less than 50 percent, as determined under §§226.6(b)(1)(ix) and (f)(1)(x)(A) of this part, the center must report the percentage of children in care who meet this standard.

(v) If the center's annual for-profit eligibility percentage is 50 percent or greater, as determined under §§226.6(b)(1)(ix) and (f)(1)(x)(A) of this part, the center does not need to report the percentage of children in care who meet this standard.

(vi) No additional submission of information to support the eligibility determination, such as attendance or title XX participation, is necessary if the center's annual for-profit eligibility percentage is 50 percent or greater.

(4) For each month in which reimbursement is claimed, each independent for-profit adult day care center and sponsoring organization of for-profit adult day care centers must also certify that at least 25 percent of enrolled adult participants received title XIX or title XX benefits.

(i) Claims for reimbursement may be submitted only for months in which the 25 percent standard for participation of eligible adult participants is met.

- (ii) Reimbursement may not be claimed for any meals served at a for-profit center when less than 25 percent of enrolled adult participants meet this standard.
- (iii) If the center's annual for-profit eligibility percentage is less than 50 percent, as determined under §§226.6(b)(1)(ix) and (f)(1)(x)(B) of this part, the center must report the percentage of enrolled adult participants who meet this standard.
- (iv) If the center's annual for-profit eligibility percentage is 50 percent or greater, as determined under §§226.6(b)(1)(ix) and (f)(1)(x)(B) of this part, the center does not need to report the percentage of enrolled adult participants who meet this standard.
- (v) No additional submission of information to support the eligibility determination, such as attendance or participation in title XIX or title XX, is necessary if the center's annual for-profit eligibility percentage is 50 percent or greater.
- (5) For each month in which a for-profit center, described under paragraphs (c)(3)(v) or (c)(4)(iv) of this section, does not meet the 25 percent standard, the institution must notify the State agency that reimbursement will not be claimed.
- (6) Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization must perform edit checks on each facility's meal claim. At a minimum, the sponsoring organization's edit checks must:
 - (i) Verify that each facility has been approved to serve the types of meals claimed; and
 - (ii) Compare the number of children or adult participants enrolled for care at each facility, multiplied by the number of days on which the facility is approved to serve meals, to the total number of meals claimed by the facility for that month. Discrepancies between the facility's meal claim and its enrollment must be subjected to more thorough review to determine if the claim is accurate.

* * * * *

5. In §226.11, revise paragraph (c)(4) to read as follows:

§226.11 Program payments for centers.

* * * * *

(c) * * *

(4) For-profit centers.

(i) For-profit child care centers, including for-profit at-risk and outside-school-hours care centers, must be reimbursed only for the calendar months during which at least 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. However, children who only receive at-risk afterschool meals or snacks must not be considered in determining this eligibility.

(ii) For-profit adult day care centers must be reimbursed only for the calendar months during which at least 25 percent of enrolled adult participants were beneficiaries of title XIX, title XX, or a combination of titles XIX and XX.

(iii) In States where the State agency has elected the methods described under paragraphs (c)(5)(ii) and (c)(5)(iii) of this section, the State agency uses the free and reduced-price counts that support each center's annual for-profit eligibility percentage, if it is 50 percent or greater, to assign an annual claiming percentage or an annual blended per-meal rate.

(iv) The State agency may require a for-profit center to submit information to recalculate the claiming percentage or blended rate more frequently than annually, as needed for proper administration of the Program.

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Dated: June 28, 2018.

Brandon Lipps,
Acting Deputy Under Secretary,
Food, Nutrition, and Consumer Services.

[FR Doc. 2018-21445 Filed: 10/3/2018 8:45 am; Publication Date: 10/4/2018]