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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 226

RIN 0584–AC42

Child and Adult Care Food Program; Improved Targeting of Day Care Home Reimbursements

AGENCY: Food and Consumer Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Child and Adult Care Food Program regulations governing reimbursement for meals served in family or group day care homes by incorporating provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Specifically, this rule establishes a two-tiered reimbursement rate structure for day care homes. Under this structure, the level of reimbursement for meals served to enrolled children will be determined by economic need based on: the location of the day care home; the income of the day care provider; or the income of individual children's households. In addition, this rule makes a minor amendment to the National School Lunch Program regulations to facilitate the provision of elementary school data on free and reduced price eligibility determinations to sponsors of family day care homes. These revisions are intended to target higher CACFP reimbursements to low-income providers and children.

DATES: Effective July 1, 1997, except for sections 210.9(b)(20), 210.19(f), 226.6(f)(2) and 226.6(f)(9), which are effective March 10, 1997. To be assured of consideration, comments must be postmarked on or before April 7, 1997, except for comments on the information collection which must be received by March 10, 1997.

ADDRESSES: Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302. Comments in response to this rule may be inspected at the above address during normal business hours, 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie or Edward Morawetz at the above address or by telephone at 703–305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). This rule is expected to have a significant impact on a substantial number of small entities. Specifically, it will impact day care homes classified as tier II day care homes. Additional discussion of this impact is contained in the Economic Impact Analysis following this rule.

Executive Order 12372

The Child and Adult Care Food Program (CACFP) and the National School Lunch Program (NSLP) are listed in the Catalog of Federal Domestic Assistance under No. 10.559 and 10.555, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Paperwork Reduction Act

Summary: In accordance with the Paperwork Reduction Act of 1995, this Notice announces the Food and Consumer Service's (FCS) intention to request Office of Management and Budget (OMB) review of the adjustments to be made to the information collections for the Child and Adult Care Food Program and the National School Lunch Program as a result of the interim rule, Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements.

To be assured of consideration, comments on the information collection must be received by March 10, 1997.

Comments on the information collection should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302.

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

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

Titles: 7 CFR Part 226, Child and Adult Care Food Program and 7 CFR Part 210, National School Lunch Program.

OMB Numbers: 0584–0055 and 0584–0006.

Type of request: Revision of existing collections.

Abstract: The interim rule, Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements, is intended to implement the provision included in Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, that establishes a two-tiered reimbursement system for day care homes participating in the Child and Adult Care Food Program. Under this structure, the level

of reimbursement for day care homes will be determined by economic need based on: (1) The location of the day care home; (2) the income of the day care home provider; or (3) the household income of each participating child.

In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to comment on the information requirements of this interim rule as noted below:

Section	Annual No. of respondents	Annual frequency	Annual responses	Per response	Annual burden hours
7 CFR 210.9(b)(20) School food authorities provide State agencies with a listing of elementary schools with at least 50% eligibility					
New	4,969 school food authorities	1	4,969	.50	2,485
7 CFR 210.19(f) State agency collects and maintains a listing of all elementary schools participating in the National School Lunch Program with at least 50% eligibility					
New	54 State agencies	1	54	2	108
7 CFR 210.19(f) State agency provides Child and Adult Care Food Program State agencies with a listing of all elementary schools participating in the National School Lunch Program with at least 50% eligibility					
New	12 State agencies	1	12	.50	6
7 CFR 226.6(f)(9) State agencies administering CACFP provide listing of eligible schools to sponsoring organizations					
New	54 State agencies	23	1,242	1	1,242
7 CFR 226.6(f)(9) State agencies administering CACFP provide census data to sponsoring organizations					
New	54 state agencies	2.3	124	1	124
7 CFR 226.6(f)(10) Sponsoring organizations submit tier I and tier II enrollment information to State agencies					
New	1,240 sponsors	1	1,240	1	1,240
7 CFR 226.15(e)(3) Sponsoring organizations maintain documentation used to classify homes as tier I					
New	1240 sponsors	40	49,600	1	49,600
7 CFR 226.13(b) Sponsoring organizations collect and report meals by category to State agency each month					
New	1,240 sponsors	12	14,880	2	29,760
7 CFR 226.13(d)(1)–(3), 226.18(e) Tier I and Tier II homes submit monthly meal counts to sponsors					
New	193,000 homes	12	2,316,000	1.25	2,895,000
7 CFR 226.13(d)(3)(i)–(iii) Sponsoring organizations establish reimbursement amounts for tier II homes with income-eligible children					
New	496 sponsors	78	38,688	.50	19,344
7 CFR 226.15(e)(3) Sponsoring organizations, upon request, collect free and reduced applications from enrolled children in Tier II that are not providers own at least once a year and maintain eligibility determination of each enrolled child					
New	496 sponsors	39	19,344	.50	9,672
7 CFR 226.23(e)(1) Households of children enrolled in tier II day care homes complete free and reduced price applications					
New	166,752 households	1	166,752	.075	12,506
7 CFR 226.23(h)(6) Sponsoring organizations collect information to conduct verification of homes that qualify as tier I based on provider's income					
New	1,240 sponsors	16	19,840	1	19,840

Total Proposed Burden Hours: 3,040,927.

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This 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 implementation. This

rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Child and Adult Care Food Program: (1) Institution appeal procedures are set forth in 7 C.F.R. § 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR 226.22 and 7 CFR 3015.

This rule implements the amendments set forth under sections 708(e) (1) and (3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193 (the Act), which was enacted on August 22, 1996. The Act made several fundamental changes affecting the reimbursement provided for meals served in family or group day care homes under the Child and Adult Care Food Program. Section 708(k)(3) of Pub. L. 104–193 requires that interim regulations implementing these amendments be issued by January 1, 1997, and that final regulations be issued by July 1, 1997. For this reason, the Administrator of the Food and Consumer Service has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that it is impracticable and contrary to the public interest to take prior public comment and that good cause therefore exists for publishing this rule without prior public notice and comment. Comments are being solicited until April 7, 1997. A longer comment period is not practicable given the Act's requirement that final regulations be issued by July 1, 1997. All comments will be carefully considered prior to final rulemaking.

Background

Under the Child Care Food Program (CCFP), as it was initially established and authorized in November 1975 by section 16 of the National School Lunch Act and Child Nutrition Act of 1966 Amendments of 1975 (Pub. L. 94–105), application requirements, enrollee eligibility determinations, and reimbursement rates were the same for both family and group day care homes and centers. Specifically, individual eligibility determinations based on household size and income statements were required, and the meal reimbursement rates paid to centers and to sponsors on behalf of day care homes were based on each enrolled child's eligibility for free, reduced price, or paid meals. Eligibility for free and reduced price meals was based on income thresholds and procedures essentially the same as those used by the National School Lunch Program (and still in use by the National School Lunch Program). At this time, in both day care centers and day care homes, approximately 70 percent of enrolled children were eligible for free and reduced price meals; the remaining 30 percent were eligible for paid meals.

Over the next several years, concern was raised that licensing, paperwork, and recordkeeping requirements were creating barriers to day care home participation in the CCFP, and it became clear that there were major differences between the administrative capabilities and operating methods of day care home providers and child care center operators. Specifically, differences in size of facility, relationship with parents, and management sophistication suggested the need for simpler administrative procedures in day care homes. In 1978, these concerns were addressed in the Child Nutrition Amendments of 1978 (Pub. L. 95–627). This law eliminated individual free and reduced price eligibility determinations (i.e., means testing) in day care homes and established a single reimbursement rate for each type of meal served. This rate was slightly less than the rate paid for comparable meals served at the ''free'' rate in child care centers. These changes encouraged day care home provider participation in the Program by reducing their administrative paperwork burden.

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) introduced a requirement to means test households of providers' own children by eliminating reimbursement for providers' own children if the providers' households had incomes greater than 185 percent of the Federal income poverty guidelines. Otherwise, the simplified procedures established by Public Law 95–627 were left intact. With the sole exception of means testing of providers' own children, day care homes have continued to receive reimbursement under the Program for meals served to all enrolled children, without application and regardless of income.

Simpler administrative procedures for family and group day care homes led to significant growth in their program participation. This growth was especially evident among family day care homes serving middle and upper-income children. The Study of the Child Care Food Program (CCFP) conducted for FCS by Abt Associates, Inc., showed that by 1986 approximately 70 percent of children then receiving reimbursement for meals served in family day care homes would have qualified for ''paid'' meals prior to the changes to the law in 1978. (''Paid'' meals are for children from households with incomes over 185 percent of poverty.) These percentages were exactly opposite from the percentages of income-eligible children participating in the program before the means test was eliminated. Led by growth in the family day care portion of the CCFP—renamed the Child and Adult Care Food Program (CACFP) in 1989—Program expenditures increased from $300 million in 1983 to $1.44 billion by 1995.

To illustrate the current difference between reimbursement in day care homes and centers, in 1996, for example, if a child eligible for paid meals and a child eligible for free meals both transferred from a center to a day care home, reimbursement provided for lunches for the paid child would change from $0.32 in the center to $1.54 in the day care home. The change for the child eligible for free meals would change from $1.94 in the center to $1.54 in the home. The rate difference for the ''free'' child is largely due to administrative costs, which are paid separately to sponsoring organizations of day care homes, while center administration is included in the reimbursement rate they receive.

The goal of reducing overall Federal expenditures has prompted a review of many programs and led to a decision to improve the targeting of benefits to low-income children in the CACFP. To accomplish this targeting, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 establishes two ''tiers'' of day care homes and reimbursement rates. Under the law, tier I homes are those that are located in low-income areas or those in which the provider's household income is at or below 185 percent of the Federal income poverty guidelines. All meals served to enrolled children in tier I homes will continue to be reimbursed at essentially the same rates that they currently receive, adjusted for inflation. Tier II homes, in contrast, are those which do not meet the location or provider income criteria for a tier I home. The meals served in tier II homes are reimbursed at lower rates, unless the provider elects to have the sponsor collect free and reduced price applications from the households of children enrolled for day care in the home. In that case, the meals served to identified income-eligible children (i.e., children from households with incomes at or below 185 percent of the Federal income poverty guidelines) are reimbursed at the higher, tier I rates.

These and other related provisions of the law are discussed in greater detail in the preamble that follows.

Tier I Family or Group Day Care Homes

Definition

Section 708(e)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 amended section 17(f)(3)(A) of the National School Lunch Act (NSLA) (42 U.S.C. § 1766(f)(3)(A)) by defining a ''tier I family or group day care home'' as:

[1] a family or group day care home that is located in a geographic area, as defined by the Secretary based on census data, in which at least 50 percent of the children residing in the area are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 9 [of the NSLA]; [2] a family or group 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 school meals under this Act [the NSLA] or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or [3] a family or group day care home that is operated by a provider whose household meets the income eligibility guidelines for free or reduced price meals under section 9 [of the NSLA] and whose income is verified by the sponsoring organization of the home under regulations established by the Secretary.''

Also, providers whose day care homes qualify as tier I day care homes on the basis of the provider's household income may demonstrate that they meet the criteria for free or reduced price meals by virtue of their receipt of food stamp, Food Distribution Program on Indian Reservation, or certain State programs for Temporary Assistance to Needy Families (formerly Aid to Families with Dependent Children) benefits.

This rule amends section 226.2 of the CACFP regulations by adding a definition of ''tier I day care home.''

Provision of Data

Except in cases in which a provider demonstrates its household income meets the free or reduced price eligibility standards, the Act requires that either elementary school eligibility data or census data must be utilized in order for a day care home to qualify as a tier I family or group day care home. Section 708(e)(3) of the Act further amended section 17(f)(3) of the NSLA to set forth requirements pertaining to the provision of this data to family or group day care home sponsoring organizations.

School Data

Section 708(e)(3) of the Act added section 17(f)(3)(E)(ii) to the NSLA to require that each State agency that administers either the National School Lunch or School Breakfast Programs annually provide to approved family or group day care home sponsoring organizations a list of elementary schools in the State in which at least one-half of the enrolled children are certified to receive free or reduced price meals. That provision of the Act further stipulates that, when determining whether a day care home qualifies as a tier I day care home, the CACFP State agency and sponsors shall use the most current data available at the time of the determination. Finally, the Act directs State agencies which administer the school nutrition programs to collect on an annual basis the data necessary to comply with these requirements.

The Department considers that aggregate school data on the percentage of enrolled children eligible for free and reduced price meals is a highly effective way of determining whether or not day care homes are located in low-income areas. To enable sponsors to obtain this information, this interim regulation amends the National School Lunch Program (NSLP) regulations to require school food authorities to provide the State agency administering the NSLP with a list of all elementary schools under their jurisdiction in which 50 percent or more of the enrolled children are determined eligible for free or reduced price meals as of the last operating day in October. Although the law refers to both the State agency which administers the NSLP and the State agency which administers the School Breakfast Program, in fact there are no States in which the NSLP and School Breakfast Program are operated by separate State agencies. Furthermore, in accordance with section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448), we are planning to consolidate the regulations for the NSLP and School Breakfast Program in the near future in order to eliminate duplication and to streamline program requirements. Therefore, the Department has determined that it is unnecessary to amend 7 CFR Part 220, regulations for the School Breakfast Program, to include the provision of data requirements discussed above.

The Department notes that this information is already collected and maintained at the local school food authority level. Section 210.8(c) requires school food authorities to report the total number of enrolled free, reduced price and paid children to the State agency on the October claim for reimbursement. To submit this data, the school food authority consolidates the enrollment data submitted by the individual schools under its jurisdiction. Moreover, school food authorities are required pursuant to section 210.9(a)(8) to analyze monthly meal counts submitted by their schools for accuracy. This is generally done by comparing the free, reduced price and paid meal counts to an attendance factor developed using the October enrollment data. Therefore, this new statutory requirement will not result in an additional information collection burden at the local level.

Likewise, there should be little, if any, increase in reporting burden. While there is no Federal requirement for school food authorities to report the names of participating schools to the State agency, many States do collect this information. The Department also notes that some school food authorities are accustomed to providing individual school data for severe need reimbursement under the School Breakfast Program. In most instances, these will be the same low-income schools as those meeting the criteria for a tier I low-income area determination. For these reasons, the increase in reporting burden should not be large.

The law directs the State agency administering the NSLP to provide this information directly to sponsors that request it. However, the Department is concerned that some sponsors, particularly smaller ones, may not know whom to contact in the State agency administering the NSLP to obtain this information. This would be especially true of sponsors operating in States in which an agency other than the State education agency administers the CACFP.

Therefore, this interim regulation requires the NSLP State agency to provide the CACFP State agency with a list of elementary schools in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals in addition to requiring NSLP State agencies to provide the list to requesting sponsors. This will facilitate sponsors' access to local school data while minimizing confusion. The first list shall be submitted by school food authorities to the NSLP State agency no later than March 1, 1997, from the NSLP State agency to the CACFP State agency no later than March 15, 1997, and by the CACFP State agency to sponsoring organizations by April 1, 1997. In subsequent years, this list must be provided by school food authorities no later than December 31, and from the

NSLP State agency to the CACFP State agency no later than February 1 of each year. This schedule gives school food authorities 60 days after the end of October to report this data to the NSLP agency, and the February 1 deadline will provide that agency with one month in which to compile the list and forward it to the CACFP State agency, which would then make the information available to sponsors by February 15 each year.

Census Data

Section 708(e)(3) of the Act amended section 17(f)(3)(E)(i) of the NSLA to require that the Secretary provide each State agency administering CACFP with appropriate census data showing the areas of the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced price meals. Each CACFP State agency, in turn, must provide the data to day care home sponsoring organizations in the State.

Section 708(e)(3) of the Act further provides that the sponsoring organization's determination that a day care home is located in an eligible low-income area be in effect for three years when such determination is based on school data. When census data are used, the determination remains in effect until such time as more recent census data are available. Regardless of the type of data used, section 708(e)(3) of the Act further amended section 17(f)(3) of the NSLA to give the State agency the discretion to change the determination if it subsequently learns that the area in which a home is located no longer qualifies as an eligible area. Since we believe that in order to ensure program integrity all levels of program administration should have the responsibility to amend tier I determinations based upon the benefit of new information, this interim rule provides FCS and sponsors, as well as State agencies, with this authority. This expanded authority is being granted under the Department's general authority to issue regulations necessary for the administration of the Program.

The Department has experience in the Summer Food Service Program with area eligibility determinations and the data available to document area eligibility. Based on this experience, the Department believes that census data should not be used when relevant, current information on free and reduced price eligibility in local elementary schools is available. Since census data are collected only once every ten years, and release of the data by the Bureau of the Census typically does not occur until several years after the data are collected, school data is far more current and will, in most cases, more accurately represent current economic conditions in a given area. However, we recognize that there may be certain circumstances which warrant the use of census data to establish a day care home's eligibility, even when current-year school data are available. Therefore, when providing the required census data, the Department will provide specific guidance as to the use of such data to all State agencies for making determinations in such situations.

We also recognize that there may be situations in which census data and school data provide conflicting results of an area's eligibility. Our guidance accompanying the census data will outline very specific instances in which using census data, instead of current-year school data, is appropriate. Using this guidance, the Department expects State agencies to exercise their oversight to resolve conflicts between the data sources so as to ensure that decisions on classifying tier I homes are appropriate. Of primary concern to the Department is that sponsoring organizations use the data that is most reflective of the socio-economic status of a given area when classifying homes as tier I or tier II.

Accordingly, this interim rule adds a new paragraph (b)(20) to section 210.9 to require school food authorities to provide their NSLP State agencies, by March 1, 1997, and by December 31 of each year thereafter, with a list of all elementary schools under their jurisdiction in which 50 percent or more of the enrolled children have been determined eligible for free or reduced price meals as of the last operating day of October. Furthermore, a new paragraph (f) is added to section 210.19 requiring the State agency administering the NSLP to provide by March 15, 1997, and by February 1 each year thereafter, to the State agency administering the CACFP, and to sponsoring organizations upon request, a list of all elementary schools participating in the NSLP in which at least 50 percent of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of October. In addition, this rule amends section 226.6(f) by adding a new paragraph (9) to require that the CACFP State agency provide all approved day care home sponsoring organizations in the State the school and census data as described above. For school data, this would require coordination with the NSLP State agency. New section 226.6(f)(9) also requires that, when using school or census data, the most recent available data be used in making the determination of a home's eligibility as a tier I day care home; that determinations of a home's eligibility as a tier I home will be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data; and that a sponsor, a State agency, or FCS may change the determination if information becomes available indicating that a home is no longer in a qualified area.

Making Tier I Day Care Home Determinations

Section 708(e)(3) of the Act amended section 17(f)(3)(E) of the NSLA to require that school and census data ultimately be provided to sponsoring organizations. Sponsoring organizations, consequently, will be responsible for determining which day care homes are eligible as tier I day care homes. As discussed above, this will be accomplished applying the school or census data provided by the CACFP State agency, or by determining that the households of day care home providers not located in low-income areas are eligible for free or reduced price meals by use of a free and reduced price application.

Since there is a significant financial benefit associated with the classification of a day care home as a tier I day care home, this rule requires State agencies to establish overclaims against sponsors which improperly classify a home as a tier I day care home. The Department recognizes that, because day care home classification is a new process, there are various circumstances which may result in the misclassification of a day care home as a tier I day care home as sponsors and State agencies begin these new procedures. Therefore, FCS will issue guidance, in advance of the implementation of the two-tiered reimbursement structure, to address circumstances under which a State agency may decide not to assess overclaims for tier I misclassifications.

In addition, this rule requires that sponsoring organizations of day care homes include in their annual management plans a description of their system for making tier I day care home determinations. As is the case with all items included in the management plans, State agencies are required by section 226.6(f)(2) to review and approve the system. For the initial implementation period, sponsors are required to amend their plans to include this description by April 1, 1997. The Department recognizes that this requirement will impose an additional

administrative burden on sponsors and State agencies during the transition period to the two-tiered structure. However, given the potential for significant financial liability for sponsors and State agencies resulting from incorrect determinations, it is extremely important to ensure that each sponsor's method for making tier I determinations is appropriate and achieves the most accurate determinations possible using the most current available data.

Accordingly, this rule amends section 226.15 by redesignating paragraphs (f) through (j) as paragraphs (g) through (k), respectively, and by adding a new paragraph (f) to require sponsoring organizations to make tier I day care home determinations. New paragraph (f) also indicates, as discussed above and indicated in revised section 226.6(f)(9), that determinations of a home's eligibility as a tier I day care home will be valid for one year if based on the provider's household income, three years if based on school data, or until more current data are available if based on census data. Additionally, as discussed above, a sponsor, State agency, or FCS may change a determination if information becomes available indicating that a home is no longer in a qualified area. In addition, section 226.14(a) is amended to require that State agencies establish overclaims against sponsoring organizations of day care homes when they misclassify day care homes as tier I day care homes unless the State agency determines, in accordance with FCS guidance, that the misclassification was inadvertent. Finally, section 226.6(f)(2) is amended to add the requirement that the annual management plan include a description of the sponsor's system for making tier I day care home determinations. For initial implementation, each sponsoring organization of day care homes shall amend its plan, subject to review and approval by the State agency, to include this information by April 1, 1997.

Reimbursement Factors for Tier I Homes

Section 708(e)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act amended section 17(f)(3)(A) of the NSLA to establish the reimbursement factors for meals served in tier I day care homes as the factors in effect on July 1, 1996, with adjustments made to the factors on July 1, 1997, and each July 1 thereafter. This section of the Act further amended section 17(f)(3)(A) of the NSLA to require that the factors be rounded to the nearest lower whole cent, instead of to the nearest quarter-cent increment as previously required. Subsequent adjustments must be based on the unrounded rate from the preceding school year. In addition, annual adjustments, which were previously based on changes in the Consumer Price Index for food away from home, must now be made based on the Consumer Price Index for food at home.

Section 226.4(c) of the current regulations contains the base reimbursement rates for day care homes. These rates are adjusted annually on July 1 and announced in a notice in the Federal Register. Since the base reimbursement rates become out-of-date as soon as they are adjusted for inflation, including them in the regulation serves no useful purpose. Therefore, this rule will not include the base reimbursement rates established for tier I homes under Pub. L. 104–193. A notice announcing the reimbursement rates will continue to be published in the Federal Register each July 1, as provided for under section 226.4(g).

Accordingly, this rule amends section 226.4(c) to remove the base reimbursement rates and to indicate that meals served in tier I day care homes will be reimbursed at the current rates for such homes. Also, section 226.4(g) is amended to incorporate the revised method of making annual adjustments to the rates of reimbursement. Additional discussion of reimbursement for meals served in day care homes may be found in the next section of this preamble.

Tier II Family or Group Day Care Homes

Definition

Section 17(f)(3)(A)(iii) of the NSLA, as amended by section 708(e)(1) of the Act, describes a ''tier II family or group day care home'' as a day care home that does not meet the criteria set forth for a tier I family or group day care home. Specifically, a tier II family or group day care home would not be located in an area that meets the 50 percent free or reduced price eligibility criteria, based on elementary school or census data, nor would the day care home provider's household income be at or below 185 percent of the Federal income poverty guidelines.

Accordingly, this rule amends section 226.2 to add a definition of ''tier II day care home'' which defines such a home as one which does not meet the criteria for a tier I day care home.

Election by Providers

In contrast to tier I day care homes, the law provides that meals served in tier II day care homes may be eligible for two levels of reimbursement—the tier I day care home rates for meals served to income-eligible children and tier II rates for meals provided to all other children. The Act further amended section 17(f)(3)(A)(iii) of the NSLA to give providers operating tier II homes three options with regard to how meals served in such homes are reimbursed.

While the law does not specifically require sponsors to provide notification to tier II homes of their reimbursement options, section 17(f)(3)(A)(iii)(II), as amended by the Act, clearly gives day care homes, not their sponsoring organizations, the authority to elect the reimbursement option. Therefore, this rule requires sponsors to provide such notification.

Under the first option, a day care home provider may elect to have its sponsoring organization distribute income applications to the households of all children enrolled in the home. In that case, for all meals served to enrolled children who are determined to meet the criteria for free or reduced price meals, the home would receive the tier I reimbursement rates. Meals served to enrolled children who are not eligible for free or reduced price meals, or children from whose households completed income applications are not received, would be reimbursed at the tier II reimbursement rates.

These free and reduced price eligibility determinations could be made in several ways. First, as with the current method, families may document their child's eligibility for tier I reimbursements by completing an application which shows that their household income is at or below 185 percent of poverty. The categorical eligibility options at current section 226.23(e), which are based on section 9(d)(2) of the NSLA would continue to be available to all households submitting applications. In addition, section 17(f)(3)(A)(iii)(III)(bb) of the NSLA, as amended by section 708(e)(1) of the Act, provides other categorical eligibility options for households applying for tier I meal reimbursements on behalf of children in tier II homes. Such households may demonstrate eligibility if the child or parent participates in, or is subsidized under, any ''federally or State supported child care or other benefit program with an income eligibility limit that does not exceed'' 185 percent of poverty. As quickly as possible, the Department will issue a list of Federal programs which meet this criterion, and then each State will be required to do the same for its own State-funded programs. The Department wishes to emphasize that the process of providing these lists will be ongoing, and that both the

Department and the States will be updating the lists at least annually, or more often if necessary.

Alternatively, under the second option, if a day care home provider does not want to have income applications collected from the households of enrolled children, section 17(f)(3)(A)(iii)(III)(cc), as amended by the Act, provides that the provider may elect to have the sponsor identify only those children in tier II homes who are considered categorically eligible by virtue of their participation, or their parent's participation, in a Federally or State supported program with an income eligibility limit that does not exceed the standard for free or reduced price meals. In this situation, the day care home would receive the tier I reimbursements for meals served to the categorically eligible children, and the tier II rates of reimbursement for meals served to all other children.

It is the Department's position that the above option is only possible in those limited situations where the provider knows which enrolled children are categorically eligible, or when the sponsoring organization has direct access to eligibility information for other qualifying programs. For example, a day care home sponsoring organization which is also a school food authority would be able to identify, without applications being collected from households, children in tier II homes who are categorically eligible based on their or a sibling's receipt of free or reduced price school meals. Similarly, a provider may be able to identify as categorically eligible those children in tier II homes whose care is paid through State child care vouchers that are issued based on equivalent eligibility guidelines (assuming that programs permit the provider to share the eligibility information with the sponsor). In these cases, the sponsor would distribute income applications only to the households of the children identified as participating in programs making them categorically eligible for tier I rates. The households would have the option of completing the information relating to the qualifying program rather than the income information.

In most situations, however, providers and/or sponsors will only be able to identify children whose meals are eligible for tier I reimbursement by having income applications distributed to the households of all enrolled children, a fact that the Act does not explicitly recognize. Therefore, we envision that, when the provider elects this option, the process will most often operate as it does now in child care centers and as under the first option discussed above: applications will be distributed to all households of children in the care of the tier II day care provider in order to identify all income-eligible children in that home. These applications will gather information on participation in other qualifying programs, or will request family size and income information.

Though direct certification of eligibility can be a more streamlined, less burdensome method of determining eligibility, it also raises issues related to access to information and household confidentiality. The Department is interested in receiving comments on the merits of permitting direct certification of eligibility for sponsoring organizations of day care homes. Depending on the nature of these comments, we may issue a proposed rule on such a provision in the future.

Finally, as a third option set forth in the Act, a provider may elect to receive tier II reimbursements for meals served to all children in the home, regardless of income. In this case, the sponsoring organization would not be required to collect any income applications, nor would it need to attempt to identify categorically eligible children.

The law is deliberately structured to give the provider in a tier II day care home, rather than the sponsor, the choice as to whether or not income applications will be collected from households of children enrolled in the home since this choice will have an effect on the amount of reimbursement received by the provider. When a provider elects to have income applications collected, however, it is the responsibility of the sponsoring organization to collect them, to determine the eligibility of the children, and to maintain the confidentiality of the information collected.

Sponsors also will now have the responsibility of informing providers of their reimbursement options under the law. It is important for States to assist sponsors in carrying out this responsibility. Therefore, in addition to amending the regulations to incorporate the above-discussed provisions, the Department encourages State agencies during the implementation phases of this regulation to utilize a portion of the grant money provided under section 17(f)(3)(D) of the NSLA, as amended by section 708(e)(2) of Pub. L. 104–193, to further the efforts of sponsors in informing and educating day care home providers of their options.

It is the Department's opinion that in making the sponsoring organization, rather than the day care home provider, responsible for eligibility determinations, Congress recognized the need to provide an extra level of confidentiality to the households of children attending day care homes. Therefore, this rule also prohibits sponsoring organizations of day care homes from making free and reduced price eligibility information concerning individual households available to day care homes and otherwise limits the use of such information to persons directly connected with the administration and enforcement of the Program. Although sponsors are prohibited from releasing eligibility information concerning individual households, this rule will permit sponsors to inform providers in tier II homes of the numbers (not names) of identified income-eligible enrolled children. This will afford providers in tier II homes with more precise information concerning the accuracy of the reimbursement being paid to them by their sponsors, while protecting the confidentiality of individual households, as the law intended. In addition, the Department notes that section 9(b)(2)(C)(iii) of the NSLA was amended by section 108 of the Healthy Meals for Healthy Americans Act (Pub. L. 103–448) to clarify the permissible uses of free and reduced price information. The Department is currently developing regulations concerning this provision, and will make any necessary changes to the CACFP regulations at that time.

In addition, there is a concern that a provider in a tier II home will be unable to precisely calculate reimbursement without knowing the income eligibility status of each enrolled child in the home. The Department believes that allowing sponsoring organizations to inform providers in tier II homes of the numbers of identified income-eligible children, as discussed above, addresses this concern to a great extent, while at the same time protecting the confidentiality of the households of enrolled children. However, the Department is interested in receiving public comment on how best to balance the confidentiality of households with the needs of tier II day care home providers. Any comments that we receive will be addressed in a future rulemaking.

Accordingly, this rule amends sections 226.2, 226.6(f)(2), 226.18(b) and 226.23(e)(1) to incorporate the above provisions and to help ensure that providers are informed of their reimbursement options under the law. Specifically, the definition of *Documentation* in section 226.2 is amended to incorporate the expanded categorical eligibility provided in the law for use by tier II day care homes.

Section 226.6(f)(2) is further amended to require that the annual management plan submitted to the State agency by sponsoring organizations include a description of the sponsor's system of notifying tier II day care home providers of their options for reimbursement. For the implementation period, this rule requires that sponsors submit a plan amendment describing this system by April 1, 1997. Section 226.6(f) is further amended by adding a new paragraph, (10), which requires State agencies to annually provide sponsoring organizations with a list of State-funded programs which meet the special categorical eligibility requirements for children in tier II homes. Section 226.18(b) is amended to require that the agreement between the sponsoring organization and the day care home specify the responsibility of the sponsoring organization, upon the request of a tier II day care home, to collect applications and to determine the income eligibility of enrolled children, and/or to identify categorically eligible children. In addition, section 226.18(b) is further amended to require that the agreement include the sponsor's responsibility to inform providers of their options for reimbursement under the law. Finally, sections 226.23(e)(1)(i) and (iv) are amended by deleting the language exempting sponsoring organizations of day care homes from distributing income applications; by adding language to clarify that sponsors, at the request of the provider, must collect applications, determine the income eligibility of children in tier II day care homes, and maintain the information in a confidential manner; by adding language to indicate that sponsoring organizations may inform providers in tier II homes of the numbers of income-eligible enrolled children; and by clarifying the categorical eligibility procedures that apply to households of children in tier II day care homes, as discussed above.

Meal Counting and Reporting Procedures

Under this rule, all meals served in tier I homes or in tier II homes without any identified income-eligible children will be reimbursed at one rate—all tier I or all tier II, respectively. In such homes, meals can continue to be counted and reported to the sponsor as required by current regulations. However, for those tier II homes with a mix of income-eligible and non-income-eligible children, the introduction of two levels of reimbursement for meals necessitates a change in the way meals are counted and reported.

The following sections of the preamble discuss the various options available under the law for meal counting and reporting in tier II day care homes with a mix of income-eligible and nonincome-eligible children. It is important to consider the options in the context of the affected population. In the Department's opinion, it is likely that a relatively small percentage of day care homes participating in the program will contain a mix of income-eligible and non-income-eligible children, and therefore, be eligible for two levels of reimbursement. The majority of homes will likely be either tier I day care homes (i.e., those located in low-income areas or operated by a low-income provider) or tier II day care homes without any income-eligible children. The Department also recognizes that the mix of participating homes may vary significantly from one sponsor to another, thus making it important to provide as much flexibility as possible to sponsors in their meal counting and claiming options, while at the same time continuing to maintain program integrity.

Actual Meal Counts

Though it is a common current method of meal counting and reporting, taking actual meal counts is not currently required by regulations, and under a two-tiered reimbursement rate structure could impose an additional burden on some providers and sponsoring organizations. Under an actual counts system, for all tier II homes which elect to have income-eligible children identified, sponsors would have to collect and evaluate additional income applications, and/or identify new categorically eligible children, each time the enrollment of such a tier II home changes, or reimburse meals served to newly enrolled children whose income status has not been determined at the lower tier II rates. Because of the potential financial benefit, it is likely that providers under an actual meal count system will expect their sponsoring organizations to take immediate action to determine the income status of newly enrolled children.

Since only sponsors have access to the income eligibility information for each enrolled child in each of their day care homes, providers under an actual count system would now be required to record meal counts by each enrolled child's name. [Though we understand that a number of sponsoring organizations currently require providers to record meal counts by each enrolled child's name for monitoring purposes, it is not currently required by regulation.] Recording meal counts by each enrolled child's name is necessary under an actual count system because providers will not have access to income eligibility information or income status. Then, each provider would submit the meal count records, by child's name, to the sponsor. Finally, using the information collected and maintained by the sponsor on the income status of each enrolled child, the sponsor would identify and aggregate the total number of meals served which are eligible for tier I reimbursements, and the total number of meals served which are eligible for tier II reimbursements. This process would be performed for each "mixed" tier II home under a sponsor which uses actual meal counts in order to prepare the sponsoring organization's monthly claim for reimbursement.

One benefit of an actual count system is that reimbursements are more precisely targeted, as is the intention of the Act. However, the management sophistication of the sponsoring organization, the number of "mixed" tier II homes under a particular sponsorship, and the stability or instability of day care home enrollment in a sponsorship are also factors which must be considered when assessing the merits of various counting and claiming systems. The Act recognizes the potential burden on some sponsors and providers of performing actual meal counts, and includes a provision for simplified meal counting and reporting procedures, which is discussed below.

"Simplified" Meal Counts

In addition to the usual method of recording and reporting actual meal counts, section 708(e)(1) of the Act added section 17(f)(3)(A)(iii)(IV) to the NSLA to require that the Department establish simplified meal counting and reporting procedures for tier II day care homes that receive two levels of reimbursement for meals served to enrolled children. The Act sets forth two possible alternatives that may be used, and also gives the Department the authority to develop its own simplified procedures.

The first simplified alternative set forth in the Act involves the sponsor setting, for each tier II day care home, annual percentages of the number of meals served that are to be reimbursed at the tier I and tier II reimbursement rates. The percentages would be based on the number of enrolled children identified as being from income-eligible households, and the number not from such households, in a specified month or other period. This procedure is currently an option for State agencies

for providing reimbursement in CACFP child care centers, adult day care centers, and outside-school-hours care centers, and is referred to in section 226.9(b)(2) of the regulations as ''claiming percentages.''

For example, under the ''claiming percentages'' alternative, if in the month of September a tier II day care home had 5 enrolled children, 2 of whom were determined by the sponsor to be eligible for free or reduced price meals, the home's claiming percentage for the coming year would be set at 40 percent tier I reimbursement and 60 percent tier II reimbursement. To receive reimbursement, the provider would only need to submit total meal counts by type (breakfast, lunch/supper, and supplements) each month, as is currently the case. The sponsor would apply the established claiming percentage to determine the home's reimbursement: 40 percent of all meals served in the month would receive the tier I reimbursement rates; 60 percent would receive the tier II rates.

A variation of ''claiming percentages'' is the ''blended rates'' method, also used by child care centers, adult day care centers, and outside-school-hours care centers, and contained in section 226.9(b)(3) of current regulations. Using the circumstances from the above example, by multiplying the tier I rate for lunches by 0.40 (40 percent), the tier II rate by 0.60 (60 percent), and then adding the products together, a ''blended rate'' would be derived. If the tier I rate for lunches is $1.5750 (the current rate through June 30, 1997), and the tier II rate is $0.95, this would result in a blended reimbursement rate of $1.20. All lunches served to enrolled children in the home would be reimbursed at this single rate. Again, the day care home would only need to submit total meal counts by type (breakfast, lunch/supper, supplements) to the sponsor. The total reimbursement paid to the home would be the same using either claiming percentages or blended rates.

The other alternative, presented in new section 17(f)(3)(A)(iii)(IV)(bb) of the NSLA, would annually place a tier II home into one of two or more ''reimbursement categories'' based on the percentage of income-eligible children in the home. Each reimbursement category would ''carry [ ] a set of reimbursement factors'' (i.e., the tier I rate, the tier II rate, or some other rate(s) within the range defined by tier I and tier II rates).

One example of the second alternative could involve establishing multiple reimbursement rates within the range defined by the tier I and tier II rates, and then assigning a home a rate based on the percentage of income-eligible children in the home. For example, four lunch rates could be established as follows: at $0.95 (the tier II rate), $1.5750 (the tier I rate for FY 1997), and two approximately equal points between the tier I and tier II rates—$1.16 and $1.36. Tier II homes with no income-eligible children would, of course, receive $0.95 for each lunch served to enrolled children, while tier II homes with all income-eligible children would receive the maximum rate (i.e., $1.5750) for each lunch served. However, homes with a mix of income-eligible and non-income-eligible children would be assigned one of the intermediate lunch rates ($1.16 or $1.36) based on the percentage of income-eligible children served. Homes with more than zero and up to 33.3 percent income-eligible children would receive $1.16 per lunch; homes with more than 33.3 percent and less than 66.7 percent income-eligible children would receive $1.36 per lunch; and homes with 66.7 percent or more income-eligible children would receive the maximum tier I rate of $1.5750. Again using the previous example, a home in which 40 percent of the children were income-eligible would receive $1.36 per lunch, an amount which is 16 cents per lunch higher than that derived with claiming percentages or blended rates.

Another variation of the ''reimbursement categories'' alternative set forth in the law would also involve assigning a home a rate based on the percentage of income-eligible children in the home. However, in this variation, only the tier I and tier II rates would be used. Any home with 50 percent or more income-eligible children would receive the tier I rates for all meals served; a home with less than 50 percent income-eligible children would receive the tier II rates for all meals served. In the above example, a home with 2 of 5 enrolled children identified as income-eligible (40 percent), would receive the tier II reimbursement rate of $0.95 for all lunches served.

Given the small number of children enrolled in the typical family day care home, any method other than actual counts would be especially sensitive to changes in enrollment. Any change in enrollment which results in a different mix of eligibility categories will change the actual percentage of income-eligible children in the home, thus skewing the reimbursements above or below the level which the home would receive under an actual meal count system. Again using the above example, if one income-eligible child is withdrawn from care, the home's actual percentage of children eligible for tier I meal reimbursements would decline from 40 percent to 25 percent. Under most of the simplified methods described above, the provider would then receive more reimbursement than would be the case if actual meal counts by category of reimbursement were used.

Counting and Claiming Methods Permitted by This Regulation

Based on its analysis of the relative advantages and disadvantages of each of the methods discussed above, the Department has decided to allow actual meal counts, claiming percentages, or blended rates for counting, reporting, and reimbursement of meals served in tier II day care homes serving children eligible for both tier I and tier II rates. In order to provide maximum flexibility, and recognizing the diversity and varying levels of management sophistication of sponsoring organizations, this interim rule provides sponsoring organizations the option of which of the methods to use for their day care homes. However, each sponsor must use only one method for all of its homes, and will be permitted to change this method no more frequently than annually. This limitation will minimize the potential for administrative confusion and allow State agencies to track each sponsor's system for oversight and claims edit purposes. Further, to mitigate the effects of enrollment changes when using the simplified methods, we are exercising the discretion provided to the Department under new section 17(f)(3)(A)(iii)(IV)(cc) of the NSLA, which permits ''such other simplified procedures as the Secretary may prescribe,'' by requiring that claiming percentages or blended rates for each home be adjusted at least semiannually by the sponsor, rather than annually as is the case for centers.

At this time, we are not adopting the use of the ''reimbursement categories'' approach described in the law and in two examples above. The above example involving multiple rates makes clear that at this time such an approach is potentially a far more complicated and unfamiliar method that does not offer any distinct advantages over claiming percentages or blended rates. Further, the option of reimbursing at the tier I rates for all meals served in a tier II home with 50 percent or more income-eligible children is far less precise in targeting benefits. The Department is also concerned that there is potential for abuse with this method, since a provider would gain substantial financial benefit when there are 50 percent or more income-eligible

children in the home during the month of the ''category'' determination. Finally, the use of the ''reimbursement categories'' approach could significantly reduce the Federal cost savings attributed to this provision.

To further alleviate the potential burden on sponsors of the meal counting and reporting provisions being implemented, this interim rule will not establish any specific dates for recalculation of claiming percentages or blended rates for homes, or for determining the income eligibility of enrolled children when utilizing either the simplified methods or actual counts. Rather, by requiring changes to the percentages/rates at each home no less frequently than every six months, and redeterminations of individual eligibility at least annually (as discussed below), sponsors will be able to implement a system to more evenly distribute the work load associated with these options over the course of the year.

The claiming percentages/blended rates alternative set forth in section 708(e)(1) of the Act indicates that the claiming percentage or blended rate be established based on the percentage of identified income-eligible children enrolled in a home ''in a specified month or other period.'' Although this interim regulation does not prescribe a specific time period for the enrollment determination, the Department believes it may be appropriate to consider methods which more accurately capture the income status of children enrolled in the home. Therefore, we are interested in receiving comments on two potential alternatives which would provide greater accuracy. The first alternative would involve a sponsor calculating the claiming percentage or blended rate based on a home's enrollment for an entire month using a list of enrolled children submitted by the day care home. The sponsor would assess the income eligibility status of each of the children enrolled in the home during the month and, using the enrollment list, derive the appropriate claiming percentage or blended rate. For example, if a home's enrollment list for the month of January indicates that 10 children were enrolled during the month, the home's claiming percentage or blended rate would be based on the number of identified income-eligible children, divided by 10. The second alternative would involve the day care home submitting an attendance list for the specified month. In contrast to the enrollment list, the sponsor using an attendance list would determine the claiming percentage or blended rate for the home using a weighted average of each enrolled child's level of participation during the month. The Department believes that both of these methods achieve greater accuracy in reimbursement payments, though, especially in the case of the attendance list, may impose an additional burden on the sponsor and day care homes.

Under the claiming percentages/blended rates option, for all tier II homes which elect to have the sponsor determine the income eligibility of enrolled children, the sponsor would make individual income eligibility determinations for enrolled children on an annual basis. The claiming percentage or blended rate would be set for the home at least every six months, taking into account any changes in enrollment that occurred in the six-month period. For example, for a tier II day care home that enters the program in January, the sponsor would take applications and determine the income eligibility of all enrolled children prior to the beginning of program operations. Based on the income status of the children enrolled in the home, a claiming percentage or blended rate would be established for the home. That percentage or rate would be used to reimburse meals served in the home for the next six months, regardless of changes in the home's enrollment during that period. By July, the sponsor would have assessed the income eligibility of those children new to the home since the January calculation, and would calculate a new claiming percentage or blended rate, to be used for the next six months, based on the income eligibility of each child enrolled in the home. Any child whose income status has not been determined at the time of the recalculation would be figured in the calculation at the tier II rate. The status of all children whose income eligibility had been determined in January would remain the same for the July calculation; redeterminations for these children would occur the following January.

The Department has some concerns about the potential for abuse of the claiming percentage/blended rates method; for example, low-income children who will not be in care on a regular basis could be enrolled by the provider during the month of the calculation so that the claiming percentage or blended rate is more favorable to the provider. Therefore, in an attempt to minimize potential abuse, this rule provides State agencies the authority to require a sponsoring organization to recalculate the claiming percentage or blended rate of any of its homes before the required semiannual calculation if a State agency has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation. State agencies and sponsors should be aware of and look for such potential abuse when conducting their monitoring activities. The Department is especially interested in receiving comments on ways to further minimize this potential abuse. This issue will be considered further and may be addressed in future guidance or in a future rulemaking concerning the overall management and integrity of the Program.

Although the claiming percentages/blended rates method will be adopted by this interim rule as the ''simplified meal counting and reporting procedures'' required by law, the Department is especially interested in receiving public comment on the second possible alternative in the law, described above as the ''reimbursement categories'' method, which is not being included in this interim rule. The Department is also interested in suggestions on other systems of meal counting and reporting that would not place undue burden on day care home providers or sponsors, but would provide for reimbursement payments that accurately reflect the income level of the households of enrolled children.

Accordingly, this rule amends section 226.13(c) to require that State agencies reimburse sponsoring organizations of day care homes based on the number of meals served to enrolled children, by meal type (breakfast, lunch/supper, and supplements) and by category (tier I and tier II), multiplied by the appropriate rates of reimbursement as established in the law. For the reasons discussed previously in this preamble, section 226.13(c) will no longer include the specific base reimbursement rates. The rule also adds a new section, 226.13(d), to set forth the meal counting requirements for day care homes, and to allow sponsoring organizations to select the reimbursement method (either actual counts, claiming percentage, or blended rates) that they will use to pay providers in tier II day care homes with a mix of incomeeligible and non-income-eligible children. If a sponsoring organization elects to use claiming percentages or blended rates, this rule requires in section 226.13(d) that they be recalculated at least every six months, unless the State agency requires the sponsor to recalculate a home's claiming percentage or blended rate before the required semiannual calculation if it has reason to believe that a home's percentage of income-eligible children has changed

significantly or was incorrectly established in the previous calculation. The claiming percentages or blended rates are based on individual income eligibility determinations made on an annual basis in accordance with section 226.23(e)(1).

For a detailed discussion of the implementation phases of this regulation, please refer to the Implementation section in the preamble below.

Implementation

In order to comply with the Act and implement the provisions of this regulation on July 1, 1997, sponsoring organizations will have to undertake several duties in advance of that date. First, using census data provided to the CACFP State agency by the Department, school data provided by the CACFP State agency by the State agency that administers the NSLP, or day care home providers' income information, all day care homes must be determined to be either tier I or tier II day care homes. As discussed above, once a home is designated as a tier I day care home, all meals served to enrolled children in the home are eligible for tier I rates of reimbursement (except for providers' own children, who must be income eligible). All tier II homes, unless they elect otherwise, will receive the tier II rates of reimbursement for all meals served to enrolled children.

For all tier II homes in which the provider elects to have income-eligible children identified, however, the sponsor must: (1) Collect applications and/or identify categorically eligible children; and (2) elect to use either actual meal counts, claiming percentages or blended rates as the method of reimbursement for all of its homes. If the information is not collected in order to separate actual meal counts by incomeeligible and non-income-eligible children, or to calculate a claiming percentage or blended rate for a tier II day care home by the July 1 implementation date, such a home must receive the lower tier II reimbursement rates for all meals served until the claiming percentage or blended rate is calculated, or the income status of children in an ''actual counts'' home is determined.

Reimbursement Factors for Tier II Homes

Section 708(e)(1) of the Act amended section 17(f)(3)(A)(iii)(I) of the NSLA to establish the reimbursement factors for meals served in tier II day care homes at 95 cents for lunches and suppers, 27 cents for breakfasts, and 13 cents for supplements, with adjustments made to the rates on July 1, 1997, and each July 1 thereafter. As is the case with tier I day care home reimbursement factors, the Act further amended section 17(f)(3)(A)(iii)(I)(bb) of the NSLA to require that these factors be rounded to the nearest lower cent increment, and that adjustments be based on changes to the Consumer Price Index for ''food at home'' instead of ''food away from home.'' As provided for in the Act, adjustments to the rates in subsequent years will be based on the unrounded rate from the preceding school year. As discussed in the preamble above, the base reimbursement rates will not be included in the regulatory language.

Accordingly, this rule further amends section 226.4(c) to indicate that, except for meals served to children identified as income eligible, as discussed above, all meals served in tier II day care homes will be reimbursed at the rates established in the law for tier II day care homes. Section 226.4(g) is also further amended to incorporate the revised method of adjusting the rates of reimbursement for tier II day care homes.

General Requirements for State Agencies, Sponsors and Homes

State Agency Program Reviews

Section 226.6(l) currently requires State agencies to maintain documentation of reviews of sponsoring organizations conducted, corrective actions prescribed, and follow-up efforts. This section further indicates that State agency reviews shall assess sponsoring organizations' compliance with regulations and Departmental and FCS instructions. Due to the significant financial benefit associated with classification of a day care home as a tier I home, this interim rule specifically requires that State agency reviews of sponsoring organizations of day care homes include an evaluation of the documentation used by sponsors to classify homes as tier I homes. Furthermore, due to the potentially significant financial liability to a State agency if homes are misclassified as tier I homes by sponsors, the Department strongly encourages—but will not require—State agencies to review the documentation supporting classification of tier I day care homes which qualify on the basis of school or census data at the time the sponsor initially makes the determination. Verification requirements for tier I homes qualifying on the basis of the provider's household income are addressed in this preamble below.

Accordingly, this rule amends section 226.6(l) to require that State agency reviews include the provision discussed above.

Documentation

In addition to changing the method by which sponsoring organizations reimburse meals served in day care homes, the amendments made to the CACFP by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 also necessitate changes in the records that day care home sponsors and providers are required to maintain. Section 226.15(e) sets forth the recordkeeping requirements for institutions, including sponsoring organizations of day care homes. In addition to documentation of the enrollment of each child in day care, and income eligibility information for enrolled providers' children, sponsors will now be required to maintain income eligibility information for children enrolled in tier II day care homes that have elected to have sponsors collect free or reduced price information. This includes family size and income information and/or evidence of categorical eligibility for children who participate in, or who have a parent participating in, a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the standard for free or reduced price meals. Finally, sponsors will also be required to maintain documentation of information used to classify day care homes as tier I day care homes. This would include the appropriate school or census data, and/or applications from providers whose households have been verified as eligible for free or reduced price meals.

Sections 226.18 (e) and (f) set forth similar recordkeeping requirements for day care homes. These provisions include the requirement that day care home providers maintain daily records of the number of children in attendance and the number of meals, by type (breakfast, lunch/supper, supplements), served to enrolled children. In addition, sponsors are required to submit family size and income information only for providers' own children, and day care homes must maintain documentation of this information. Under this rule, tier II day care homes in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals, and whose sponsor employs ''actual counts'' claiming methods, will now be required to maintain and submit to the sponsor the number and types of meals (breakfast, lunch/supper, supplements) served each day to each enrolled child by name.

Accordingly, this rule amends section 226.15(e)(3) to add the above requirements for documentation for sponsoring organizations of day care homes. In addition, section 226.18(f) is amended by removing the second sentence, which restricts the collection and maintenance of family size and income information to that used to determine the eligibility of providers' own children, since this information may now also be collected from the households of children in tier II homes. Finally, section 226.18(e) is amended to add the recordkeeping requirements for tier II day care homes in which actual meal counts are used, as discussed above.

Verification

Section 17(f)(3)(A)(iii)(V) of the NSLA, as amended by section 708(e)(1) of Pub. L. 104–193, authorizes the Secretary to establish any necessary minimum verification requirements for tier II day care homes. In addition, the definition of tier I day care home in section 17(f)(3)(A)(ii)(I) of the NSLA requires that a day care home that qualifies as a tier I home on the basis of the provider's household income must have this income ''verified by the sponsoring organization of the home under regulations established by the Secretary,'' as mentioned earlier in this preamble.

Current requirements for conducting verification of eligibility of participants in various types of institutions, which include sponsoring organizations of day care homes, are contained in section 226.23(h). Because day care homes are considered ''nonpricing programs,'' State agencies currently follow the provisions of section 226.23(h)(1), for ''nonpricing programs,'' to verify the applications of day care home providers' own children. This section requires that State agencies review all applications on file to ensure that (1) the application has been correctly and completely executed by the household; (2) the institution (i.e., sponsoring organization) has correctly determined and classified the eligibility of enrolled participants; and (3) the institution (i.e., sponsoring organization) has accurately reported to the State agency the number of enrolled participants meeting the criteria for free or reduced price eligibility and the number that do not. This section also permits States to conduct additional verification to determine the validity of information provided by households on the application, in accordance with section 226.23(h)(2), the verification procedures for ''pricing programs.''

Now that applications will be collected from the households of some children enrolled in tier II day care homes, the amount of verification activity required to be conducted by State agencies will increase. However, this interim rule is not making any change to the current regulations for verification by State agencies, which will continue to follow the requirements set forth in sections 226.23(h)(1)–(2). Therefore, under this interim rule, State agencies will have the option of conducting the more extensive verification of applications under section 226.23(h)(2), which would include parental contact to verify the information provided on the applications, but are not required to do so. The Department recognizes the importance of verification to reduce the potential for fraud and abuse in the program and is considering what amount of additional verification is appropriate. The Department is considering the possibility of addressing the broad subject of verification of applications in a future proposed rulemaking concerning the overall management and integrity of the Program.

However, as required by the law, this rule adds the requirement that sponsoring organizations conduct verification of the provider's income, prior to approving the application, for all day care homes that qualify as tier I homes on the basis of the provider's income. Since the information provided on the application results in a large direct benefit to the provider, in the form of higher reimbursements (tier I) for meals served to all children in care, sponsors will be required to perform the more extensive verification of the provider's eligibility as described for pricing programs in current section 226.23(h)(2)(i). This involves verifying the income and other information provided on the approved application through collection of information from the household.

Accordingly, this rule amends section 226.23(h) by adding a new paragraph, (6), that contains these new requirements for verification by sponsors of family day care homes.

Annual Requirements for Sponsoring Organizations

Section 226.6(f) sets forth requirements that institutions, including sponsoring organizations of day care homes, must comply with on an annual basis. In addition to the current requirements, this rule also adds a requirement that sponsors annually submit current information on the total number of tier I and tier II day care homes, and a breakdown showing the total number of children enrolled in tier I homes, the total number of children enrolled in tier II homes, and the number of identified income-eligible children in tier II homes (i.e., those for whom tier I reimbursements would be claimed). Submission of these data will provide States with information necessary to help ensure that the reimbursement claims subsequently submitted by sponsors accurately reflect enrollment by reimbursement category. In addition, this information will be necessary to conduct the study of the tiering system's impact mandated by section 708(l) of the Act and will provide information regarding the characteristics of program beneficiaries.

Accordingly, this rule further amends section 226.6(f) by adding new paragraph (11) to require that the above described information on tier I and tier II day care homes and enrolled children be provided by sponsoring organizations to State agencies on an annual basis.

Monthly Reporting by Sponsoring Organizations

Section 226.13(b) requires that each sponsoring organization report, on a monthly basis to the State agency, the total number of meals, by type (breakfast, lunch/supper, supplements), served to children enrolled in day care homes. Due to the changes made to the reimbursement structure for day care homes by Pub. L. 104–193, sponsoring organizations will now be required to report the number of meals served by type and by category (i.e., tier I and tier II). This information will enable State agencies to pay claims to sponsoring organizations at the appropriate levels of reimbursement.

Accordingly, this rule amends section 226.13(b) to add the requirement that sponsoring organizations of day care homes report to the State agency on a monthly basis the number of meals served by type and by category.

Free and Reduced Price Policy Statements

Section 226.23 of the regulations requires that each institution, including a day care home sponsoring organization, submit when it applies for participation in the Program, a written policy statement concerning free and reduced price meals for use in all facilities under its jurisdiction. Under section 226.23(b), the policy statement for sponsoring organizations of day care homes must consist of an assurance to the State agency that all participants are served the same meals at no separate charge, and that there is no discrimination in the course of food

service. With the establishment of tier I and tier II day care homes under the Personal Responsibility and Work Opportunity Reconciliation Act, different meal reimbursements may now be received for children in the same day care home. Therefore, the Department believes it is important for the sponsoring organization's policy statement to also include an assurance that there will be no identification of tier I and tier II recipients in day care homes, and that sponsoring organizations will not share income eligibility information concerning individual households with the day care homes and will limit the use of the information to persons directly connected with the administration and enforcement of the Program.

The Department notes that section 703 of Pub. L. 104–193 amended section 9(b)(2)(D) of the NSLA to prohibit the requirement of annual submission of free and reduced price policy statements once the initial policy has been submitted unless there are substantive changes to the original statement. However, it is the Department's position that a change of the magnitude of the institution of the tiering system for day care homes in the CACFP constitutes a ''substantive change'' in the free and reduced price policy, and thus the revised free and reduced price policy statement must be submitted to the State agency for approval. Accordingly, this rule amends section 226.23(b) to add the above requirement.

Providers' Own Children

The Personal Responsibility and Work Opportunity Reconciliation Act did not make any changes to the current requirements concerning providers' own children. In order to receive reimbursement for meals served to providers' own children, the provider's household must meet the income eligibility guidelines for free or reduced price meals. The definitions of tier I and tier II homes in the law are such that meals served to providers' own children could only be eligible for reimbursement in tier I day care homes. Any provider in a non-needy area whose own children are eligible for reimbursement would, by virtue of being low income, meet the definition of a tier I home. It should be noted, however, that income eligibility still must be determined for providers' own children in homes that sponsors approve as tier I homes based on census or school data. Since current regulations already reflect the requirements of the law, this rule does not make any changes to the regulatory language concerning providers' own children.

List of Subjects

7 CFR Part 210

Breakfast, Children, Food assistance programs, Grant programs—Social programs, Lunch, Meal Supplements, Nutrition, Reporting and recordkeeping requirements, School Nutrition Program, Surplus agricultural commodities.

7 CFR Part 226

Day care, Food assistance programs, Grant programs-health, infants and children, Records, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 210 and 226 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.9, a new paragraph (b)(20) is added to read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) *Annual agreement.* * * *

(20) No later than March 1, 1997, and no later than December 31 of each year thereafter, provide the State agency with a list of all elementary schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the preceding October.

* * * * *

3. In § 210.19, a new paragraph (f) is added to read as follows:

§ 210.19 Additional responsibilities

* * * * *

(f) *Cooperation with the Child and Adult Care Food Program.* No later than March 15, 1997, and no later than February 1 each year thereafter, the State agency shall provide the State agency which administers the Child and Adult Care Food Program with a list of all elementary schools in the State participating in the National School Lunch Program in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the preceding October. In addition, the State agency shall provide the current list, upon request, to sponsoring organizations of day care homes participating in the Child and Adult Care Food Program.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

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

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

2. In § 226.2:

a. The definition of *Documentation* is amended by redesignating paragraph (c) as paragraph (d), and by adding a new paragraph (c); and

b. definitions of *Tier I day care home* and *Tier II day care home* are added.

The additions read as follows:

§ 226.2 Definitions.

* * * * *

Documentation means * * *

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

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

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

* * * * *

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 § 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 FCS 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.

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

* * * * *

3. In § 226.4:

a. Paragraph (c) is revised; and

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

The revisions read as follows:

§ 226.4 Payments to States and use of funds.

* * * * *

(c) *Day care home funds.* For meals served to children in day care homes, funds shall be made available to each State agency in an amount no less than the sum of products obtained by multiplying:

(1) The number of breakfasts served in the Program within the State to children enrolled in tier I day care homes by the current tier I day care home rate for breakfasts;

(2) The number of breakfasts served in the Program within the State to children enrolled in tier II day care homes that have been determined eligible for free or reduced price meals by the current tier I day care home rate for breakfasts;

(3) The number of breakfasts served in the Program within the State to children enrolled in tier II day care homes that do not satisfy the eligibility standards for free or reduced price meals, or to children from whose households applications were not collected, by the current tier II day care home rate for breakfasts;

(4) The number of lunches and suppers served in the Program within the State to children enrolled in tier I day care homes by the current tier I day care home rate for lunches/suppers;

(5) The number of lunches and suppers served in the Program within the State to children enrolled in tier II day care homes that have been determined eligible for free or reduced price meals by the current tier I day care home rate for lunches/suppers;

(6) The number of lunches and suppers served in the Program within the State to children enrolled in tier II day care homes that do not satisfy the eligibility standards for free or reduced price meals, or to children from whose households applications were not collected, by the current tier II day care home rate for lunches/suppers;

(7) The number of supplements served in the Program within the State to children enrolled in tier I day care homes by the current tier I day care home rate for supplements;

(8) The number of supplements served in the Program within the State to children enrolled in tier II day care homes that have been determined eligible for free or reduced price meals by the current tier I day care home rate for supplements; and

(9) The number of supplements served in the Program within the State to children enrolled in tier II day care homes that do not satisfy the eligibility standards for free or reduced price meals, or to children from whose households applications were not collected, by the current tier II day care home rate for supplements.

* * * * *

(g) * * *

(1) The rates for meals served in tier I and tier II day care homes shall be adjusted annually, on July 1 (beginning July 1, 1997), on the basis of changes in the series for food at home of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be rounded to the nearest lower cent based on changes measured over the most recent twelve-month period for which data are available. The adjustments shall be computed using the unrounded rate in effect for the preceding school year.

* * * * *

4. In § 226.6:

a. The second sentence of paragraph (f)(2) is revised;

b. Paragraphs (f)(9), (f)(10), and (f)(11) are added; and

c. A new sentence is added after the third sentence of paragraph (l) introductory text.

The additions and revision read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(f) * * *

(2) * * * Such a plan shall include: detailed information on the organizational administrative structure; the staff assigned to Program management and monitoring; administrative budget; procedures which will be used by the sponsoring organization to administer the Program in and disburse payments to the child care facilities under its jurisdiction; and, for sponsoring organizations of day care homes, a description of the system for making tier I day care home determinations, and a description of the system of notifying tier II day care homes of their options for reimbursement. For initial implementation of the two-tiered reimbursement structure for day care homes, by April 1, 1997, each sponsoring organization of day care homes shall submit an amendment to its plan, subject to review and approval by the State agency, describing its systems for making tier I day care home determinations and for notifying tier II day care homes of their options for reimbursement.

* * * * *

(9) Coordinate with the State agency which administers the National School Lunch Program to ensure the receipt of a list of elementary schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced price meals. The State agency shall provide the list to sponsoring organizations by April 1, 1997, and by each February 15 thereafter. The State agency also shall provide each sponsoring organization with census data, as provided to the State agency by FCS upon its availability on a decennial basis, showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced price meals. In addition, the State agency shall ensure that the most recent available data is used if the determination of a day care home's eligibility as a tier I day care home is made using school or census data. Determinations of a day care home's eligibility as a tier I day care home shall be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, the State agency, or FCS may change the determination if information becomes available indicating that a home is no longer in a qualified area.

(10) Provide all sponsoring organizations of day care homes in the State with a listing of State-funded programs, participation in which by a parent or child will qualify a meal served to a child in a tier II home for the tier I rate of reimbursement.

(11) Require each sponsoring organization of day care homes to submit the total number of tier I and tier II day care homes that it sponsors; a breakdown showing the total number of children enrolled in tier I day care homes; the total number of children enrolled in tier II day care homes; and the number of children in tier II day care homes that have been identified as eligible for free or reduced price meals.

* * * * *

(l) * * * Program reviews shall include State agency evaluation of the documentation used by sponsoring organizations to classify their day care homes as tier I day care homes. * * *

* * * * *

5. In § 226.13:

a. Paragraph (b) is revised;

b. Paragraph (c) is revised; and

c. New paragraph (d) is added.

The addition and revisions read as follows:

§ 226.13 Food service payments to sponsoring organizations for day care homes.

* * * * *

(b) Each sponsoring organization shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and

supplements) and by category (tier I and tier II), served to children enrolled in approved day care homes.

(c) Each sponsoring organization shall receive payment for meals served to children enrolled in approved day care homes at the tier I and tier II reimbursement rates, as applicable, and as established by law and adjusted in accordance with § 226.4. However, the rates for lunches and suppers shall be reduced by the value of commodities established under § 226.5(b) for all sponsoring organizations for day care homes which have elected to receive commodities. For tier I day care homes, the full amount of food service payments shall be disbursed to each day care home on the basis of the number of meals served, by type, to enrolled children. For tier II day care homes, the full amount of food service payments shall be disbursed to each day care home on the basis of the number of meals served to enrolled children by type, and by category (tier I and tier II) as determined in accordance with paragraphs (d)(2) and (d)(3) of this section. However, the sponsoring organization may withhold from Program payments to each home an amount equal to costs incurred for the provision of Program foodstuffs or meals by the sponsoring organization on behalf of the home and with the home provider's written consent.

(d) As applicable, each sponsoring organization for day care homes shall:

(1) Require that tier I day care homes submit the number of meals served, by type, to enrolled children.

(2) Require that tier II day care homes in which the provider elects not to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals submit the number of meals served, by type, to enrolled children.

(3) Not more frequently than annually, select one of the methods described in paragraphs (d)(3) (i)–(iii) of this section for all tier II day care homes in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals. In such homes, the sponsoring organization shall either:

(i) Require that such day care homes submit the number and types of meals served each day to each enrolled child by name. The sponsoring organization shall use the information submitted by the homes to produce an actual count, by type and by category (tier I and tier II), of meals served in the homes; or

(ii) Establish claiming percentages, not less frequently than semiannually, for each such day care home on the basis of the number of enrolled children determined eligible for free or reduced-price meals. The State agency may require a sponsoring organization to recalculate the claiming percentage for any of its day care homes before the required semiannual calculation if the State agency has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation. Under this system, day care homes shall be required to submit the number of meals served, by type, to enrolled children; or

(iii) Determine a blended per-meal rate of reimbursement, not less frequently than semiannually, for each such day care home by adding the products obtained by multiplying the applicable rate of reimbursement for each category (tier I and tier II) by the claiming percentage for that category. The State agency may require a sponsoring organization to recalculate the blended rate for any of its day care homes before the required semiannual calculation if the State agency has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation. Under this system, day care homes shall be required to submit the number of meals served, by type, to enrolled children.

6. In § 226.14, the introductory text of paragraph (a) is amended by adding a sentence after the first sentence to read as follows:

§ 226.14 Claims against institutions.

(a) * * * State agencies shall assert overclaims against any sponsoring organization of day care homes which misclassifies a day care home as a tier I day care home unless the misclassification is determined to be inadvertent under guidance issued by FCS. * * *

* * * * *

7. In § 226.15:

a. Paragraph(e)(3) is revised;

b. Paragraphs (f) through (j) are redesignated as paragraphs (g) through (k), respectively; and

a. A new paragraph (f) is added.

The addition and revision read as follows:

§ 226.15 Institution provisions.

* * * * *

(e) * * *

(3) Documentation of: the enrollment of each child at day care homes; information used to determine the eligibility of enrolled providers' children for free or reduced price meals; information used to classify day care homes as tier I day care homes; and information used to determine the eligibility of enrolled children in tier II day care homes that have been identified as eligible for free or reduced price meals in accordance with § 226.23(e)(1).

* * * * *

(f) *Day care home classifications.* Each sponsoring organization of day care homes shall determine which of the day care homes under its sponsorship are eligible as tier I day care homes. A sponsoring organization may use current school or census data provided by the State agency or free and reduced price applications collected from day care home providers in making a determination for each day care home. Determinations of a day care home's eligibility as a tier I day care home shall be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, State agency, or FCS may change the determination if information becomes available indicating that a home is no longer in a qualified area.

* * * * *

8. In § 226.18:

a. Paragraphs (b)(11) and (b)(12) are added;

b. Paragraph (e) is amended by adding a new sentence after the first sentence; and

c. Paragraph (f) is amended by removing the second sentence.

The additions and revision read as follows:

§ 226.18 Day care home provisions.

* * * * *

(b) * * *

(11) The responsibility of the sponsoring organization to inform tier II day care homes of all of their options for receiving reimbursement for meals served to enrolled children.

(12) The responsibility of the sponsoring organization, upon the request of a tier II day care home, to collect applications and determine the eligibility of enrolled children for free or reduced price meals.

* * * * *

(e) * * * Each tier II day care home in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals, and in which the sponsoring organization employs a meal counting and claiming system in accordance with § 226.13(d)(3)(i), shall maintain and submit each month to the sponsoring organization daily records of the

number and types of meals served to each enrolled child by name. * * *

* * * * *

9. In § 226.23:

a. Paragraph (b) is amended by adding a sentence at the end of the paragraph;

b. Paragraph (e)(1)(i) is revised;

c. Paragraph (e)(1)(iv) is revised; and

d. Paragraph (h)(6) is added.

The additions and revisions read as follows:

§ 226.23 Free and reduced price meals.

* * * * *

(b) * * * This statement shall also contain an assurance that there will be no identification of children in day care homes in which meals are reimbursed at both the tier I and tier II reimbursement rates, and that the sponsoring organization will not make any free and reduced price eligibility information concerning individual households available to day care homes and will otherwise limit the use of such information to persons directly connected with the administration and enforcement of the Program.

* * * * *

(e)(1) * * *

(i) For the purpose of determining eligibility for free and reduced price meals, institutions shall distribute applications for free and reduced price meals to the families of participants enrolled in the institution. Sponsoring organizations of day care homes shall distribute applications for free and reduced price meals to day care home providers who wish to enroll their own eligible children in the Program. At the request of a provider in a tier II day care home, sponsoring organizations of day care homes shall distribute applications for free and reduced price meals to households of all children enrolled in the home, or, if the provider in a tier II day care home so elects, shall distribute such applications only to households identified as being categorically eligible for tier I meals. These applications, and any other descriptive material distributed to such persons, shall contain only the family-size income levels for reduced price meal eligibility with an explanation that households with incomes less than or equal to these levels are eligible for free or reduced price meals. Such forms and descriptive materials may not contain the income standards for free meals. However, such forms and materials distributed by child care institutions other than sponsoring organizations of day care homes shall state that, if a child is a member of a food stamp household or AFDC assistance unit, the child is automatically eligible to receive free Program meal benefits, subject to the completion of the application as described in paragraph (e)(1)(ii) of this section; such forms and materials distributed by sponsoring organizations of day care homes shall state that, if a child or a child's parent is participating in or subsidized under 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 or reduced price meals, meals served to the child are automatically eligible for tier I reimbursement, subject to the completion of the application as described in paragraph (e)(1)(ii) of this section, and shall list any programs identified by the State agency as meeting this standard; such forms and materials distributed by adult day care centers shall state that, if an adult participant is a member of a food stamp household or is a SSI or Medicaid participant, the adult participant is automatically eligible to receive free Program meal benefits, subject to the completion of the application as described in paragraph (e)(1)(iii) of this section. Sponsoring organizations of day care homes shall not make free and reduced price eligibility information concerning individual households available to day care homes and shall otherwise limit the use of such information to persons directly connected with the administration and enforcement of the Program. However, sponsoring organizations may inform tier II day care homes of the number of identified income-eligible enrolled children.

* * * * *

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

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

(B) the signature of an adult member of the household as provided for in paragraph (e)(1)(ii)(G) of this section. In accordance with paragraph (e)(1)(ii)(F) of this section, if a case number is provided, it may be used to verify the current certification for the child(ren) for whom free meal benefits are claimed. Whenever households apply for benefits for children not receiving food stamp, AFDC, or for tier II homes, other qualifying Federal or State program benefits, they must apply in accordance with the requirements set forth in paragraph (e)(1)(ii) of this section.

* * * * *

(h) * * *

(6) Verification procedures for sponsoring organizations of day care homes. Prior to approving an application for a day care home that qualifies as tier I day care home on the basis of the provider's household income, sponsoring organizations of day care homes shall conduct verification of such income in accordance with the procedures contained in paragraph (h)(2)(i) of this section.

Dated: December 30, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

Appendix to the Preamble

Note: This appendix will not appear in the Code of Federal Regulations

ECONOMIC IMPACT ANALYSIS

1. Title: Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements

2. Statutory Authority: Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193)

3. Background

This interim rule amends the Child and Adult Care Food Program (CACFP) regulations governing reimbursement rates for meals served in family or group day care homes by incorporating provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193); these provisions reduce the reimbursement rates for meals served to children who do not qualify for low-income subsidies. Specifically, this rule develops a two tier reimbursement structure for meals served to children enrolled in family or group day care homes. Under this structure, the level of reimbursement for meals served to enrolled children will be determined by: (1) the location of the day care home; (2) the income of the day care provider; or (3) the income of each enrolled child's household.

This interim rule targets CACFP meal reimbursement payments to low-income children and the day care home providers who serve them, where low-income is defined as not exceeding 185 percent of the Federal income poverty guidelines. This interim rule retains near-current reimbursement rates for meals served to children by providers residing in low-income areas or served by providers who are low-income. Near-current reimbursements will also be retained for meals served to children who are identified as low-income even if the provider neither resides in a low-income area nor is low-income. Meals served to all other children will be reimbursed at the lower rates. These changes will be effective July 1, 1997.

4. Cost/Benefit Assessment of Economic and Other Effects

Benefits

The need to reduce overall Federal expenditures has prompted a review of many programs and led to the legislative decision to improve the targeting of CACFP benefits to low-income children. To accomplish targeting of benefits, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 establishes two tiers of day care homes and reimbursement rates. Under tiering, any CACFP participating day care home (DCH) located in a low-income area or operated by a low-income provider is eligible for tier I status, where low-income areas are determined by local school or census data. All meals served in tier I DCHs are reimbursed at the higher set of reimbursement rates. All DCHs not qualifying for tier I are tier II DCHs. Meals served in tier II DCHs are reimbursed at the lower set of rates, with the exception that meals served to documented low-income children are reimbursed at the higher set of rates.

The initial establishment of the Child Care Food Program (CCFP) in November, 1975 required both types of CCFP providers, day care centers and DCHs, to make individual eligibility determinations based on each participating child's household size and income. Meal reimbursement rates paid to sponsors for meals served in DCHs were based on each enrolled child's documented eligibility for free, reduced price or paid meals. In order to be a DCH, which denotes a CCFP participating home in this analysis, a home has always had to (1) meet State licensing requirements, or be approved by a State or local agency and (2) be sponsored by an organization that assumes responsibility for ensuring the DCH's compliance with Federal and State regulations (these licensing and sponsorship requirements are still in effect).

In the years following establishment of the program, concerns were raised that the paperwork and recordkeeping requirements were creating barriers to DCH participation in the CCFP. In 1978, P.L. 95–627 eliminated free and reduced price eligibility determinations for individual children in DCHs (but left unchanged day care centers' individual eligibility determination requirements), and established a single reimbursement rate for each type of meal served in DCHs (lunches/suppers, breakfasts), and such changes encouraged day care providers' participation in the CCFP by reducing their administrative paperwork burden. The Omnibus Budget Reconciliation Act of 1981 added the requirement of a means test for providers to claim reimbursements for meals served to their own children in care. With this sole exception, all DCHs continued to receive the same reimbursements for all meals served to children in care, regardless of each child's income.

The day care portion of the CCFP (The CCFP was renamed the Child and Adult Care Food Program (CACFP) in 1989 when an adult day care component was added.) has experienced dramatic growth in both DCH participation and Federal government costs. From fiscal year 1986 to fiscal year 1995, the number of participating DCHs increased from 82,000 to 193,000, an increase of 134 percent. During the same period, meal reimbursements in nominal dollars increased from around $190 million to about $730 million, a 280 percent increase.[1,2] Program growth has occurred primarily among non-low-income children: table 1 shows that the proportion of low-income DCH participants decreased rapidly after individual eligibility determinations were eliminated in 1978. The table shows the proportion of DCH children with household incomes below 130 percent of the Federal income poverty guidelines decreased by 33 percentage points between 1977 and 1982 and by an additional 9 between 1982 and 1986. During the same periods the percentage of non-low-income children (above 185 percent of poverty) increased 46 and 7 percentage points, respectively. While empirical data is unavailable, it is believed that the income status of children in DCHs in 1996 was comparable to that in 1986. The growth in DCHs among non-low-income children is the impetus for P.L. 104–193's targeting of DCH benefits to low-income children.

TABLE 1.—INCOME ELIGIBILITY STATUS OF CHILDREN IN DCHS BY YEAR

Percent of poverty	Percent of DCH children in poverty strata by year(s)				
	1977[a]	1982[b]	Change between 1977–1982	1986[c]	Change between 1982–1986
≤130	58	25	−33	16	−9
131–185	24	11	−13	13	+2
≥185	18	64	+46	71	+7
Total	100	100	N/A	100	N/A

[a] Percentage represent the proportion of meals served by category: free (to children from hoseholds with income ≤130% of Federal income poverty guidelines), reduced price (131–185% of poverty), and paid (≥185% of poverty). Since most DCHs operating in 1977 were non-pricing, that is did not charge separately for each meal served, it is assumed children in care of different income strata have equal propensitives consume meals, which implies the proportion of meals served by category in 1977 is a reasonable proxy for children's income eligibility percentages (assuming children eligible for free or reduced-price benefirts generally became approved to receive them).

[b] Taken from a citation of the Evaluation of Child Care Food Program: Results of the Child Care Food Program: Results of the Child Impact Study Telephone Survey and Pilot Study in the Study of the Child Care Food Program[1] report.

[c] Taken from Study of the Child Care Food Program.[1]

The 1986 Study of the Child Care Food Program (CCFP Study)[1] that was conducted by Abt. and sponsored by USDA Food and Nutrition Service, found that approximately 70 percent of the children enrolled in DCHs in 1986 would not have been eligible for free or reduced price meals had a means test been performed on them. The establishment of a two tier reimbursement system focuses Federal child care benefits on children who are low-income.

The two tier reimbursement rate structure is expected to effect significant Federal budgetary savings. The six year projected savings (fiscal years 1997–2002) are approximately $2.2 billion (see table 4). The savings would result from 1) a reduction in the reimbursement rates for meals served in tier II (non-low-income) DCHs and 2) a decrease in the rate of growth of day care home participation in the CACFP and savings in sponsor administrative payments and audit expenditures resulting from this slower rate of growth. The estimated savings assume that in fiscal years 1997–2002 approximately 70 percent of the children in care will be ineligible for the higher reimbursement rates. This 70 percent assumption follows from the income levels of the children who participated in 1986.1

The reduction in reimbursement rates for meals served to children in tier II DCHs who are not documented income-eligible would result in savings of approximately $1.9 billion over the next six years (fiscal years

1997–2002). Rates for all meals served to these children-lunches/supper, breakfasts, and supplements-would decrease as shown in table 2. The rate change would result in a savings of about $0.63 for every lunch or supper served during fiscal year 1998, the first full fiscal year in which the new two tier system will be in effect. The savings would increase to about $0.70 per meal by fiscal year 2002. Breakfast savings would range from almost $0.61 per meal served in fiscal year 1998 to almost $0.66 in fiscal year 2002, and supplement savings would range from about $0.35 cents in fiscal year 1998 to almost $0.39 cents in fiscal year 2002.

TABLE 2.—CHANGES IN TIER II DCH MEAL REIMBURSEMENT RATES DUE TO TIERING

Fiscal year	Meal type	Projected meal reimbursement rates			
		DCH rates before P.L. 104–193	Tier II DCH rates after P.L. 104–193	Difference	Percent change
1998	Lunch/Supper	$1.6175	$0.9900	$0.6275	−38.8
	Breakfast	0.8850	0.2800	0.6050	−68.4
	Supplement	0.4825	0.1300	0.3525	−73.1
1999	Lunch/Supper	1.6600	1.0100	0.6500	−39.2
	Breakfast	0.9050	0.2900	0.6150	−68.0
	Supplement	0.4950	0.1400	0.3550	−71.7
2000	Lunch/Supper	1.7050	1.0400	0.6650	−39.0
	Breakfast	0.9275	0.3000	0.6275	−67.7
	Supplement	0.5075	0.1400	0.3675	−72.4
2001	Lunch/Supper	1.7500	1.0700	0.6800	−38.9
	Breakfast	0.9525	0.3100	0.6425	−67.5
	Supplement	0.5225	0.1400	0.3825	−73.2
2002	Lunch/Supper	1.7975	1.1000	0.6975	−38.8
	Breakfast	0.9750	0.3200	0.6550	−67.2
	Supplement	0.5350	0.1500	0.3850	−72.0

The growth of day care home participation in the CACFP is projected to slow as a result of the two tier rate structure, as some would-be providers are expected to perceive the program as offering insufficient financial incentive and/or being more administratively burdensome, relative to the financial benefits, than under prior law. This slowing in homes' participation is projected to cause a slowing in the rate of growth of sponsor administrative payments and meals served. As shown in table 3, it is estimated that in fiscal year 1998, the first full year of tiering, 27 million fewer meals will be served than would have been served under the current reimbursement rate structure (due to a slower growth rate in day care home participation). The six year effect (fiscal years 1997–2002) of this projected slowing of growth is a decrease in the number of meals served by 376 million, which is measured relative to the number projected under pre-July 1, 1997 reimbursement rates. The six year (fiscal years 1997–2002) projected savings from this slowing of program growth is approximately $300 million, measured in nominal dollars.

TABLE 3.—CHANGES IN DCH MEAL GROWTH RATE DUE TO TIERING

Fiscal year	Projected meals (in thousands) [b]					
	Before P.L. 104–193	After P.L. 104–193			Difference (total)	Percent change
		Tier I	Tier II	Total		
1997 [a]	817,177	243,528	568,232	811,760	−5,417	−0.7
1998	860,488	249,982	583,290	833,272	−27,216	−3.2
1999	904,372	256,356	598,164	854,520	−49,852	−5.5
2000	948,687	262,637	612,819	875,456	−73,231	−7.7
2001	993,275	268,809	627,221	896,029	−97,246	−9.8
2002	1,039,959	275,126	641,960	917,086	−122,873	−11.8
1997–2002	5,563,958	1,556,437	3,631,687	5,188,124	−375,834	−6.8

[a] Tiering does not become effective until the beginning of the fourth quarter (July 1, 1997) of fiscal year 1997.
[b] In fiscal year 1995, national DCH meal counts imply the average DCH served 19 breakfasts, 31 lunches/suppers, and 31 supplements in an average week.

Costs

This interim rule promulgates the two tier CACFP meal reimbursement system specified in P.L. 104–193. This system was designed to reduce Federal child care subsidies to providers and parents who are non-low-income. Tiering will reap a projected $2.2 billion in Federal savings over the next six fiscal years through (1) lower meal reimbursement payment rates for non-low-income DCH providers and non-low-income children and (2) secondary savings stemming from the lower rates, including the decrease in DCH growth rate. The non-low-income providers will likely pass some of their revenue loss on to their clientele (primarily non-low-income parents) through higher child care fees. Non-low-income providers and parents will thus bear most of ing from the projected $2.2 billion reduction in Federal expenditures—as was the intent of P.L. 104–193. In addition to these fiscal costs, operating the two tier system will place new

administrative burdens (costs) on DCH sponsors, State CACFP and State National School Lunch Program (NSLP) agencies, and NSLP school food authorities. The following analysis will show these administrative costs are minor in comparison with the costs to non-low-income providers and parents.

TABLE 4.—FEDERAL CACFP DCH COSTS BEFORE AND AFTER P.L. 104–193

Fiscal year	Before P.L. 104–193			After P.L. 104–193					Change			
	Total DCH	Total meals	Admin. and audit	Total DCH	Meal: Tier I meal	Meal: Tier II meal	Meal: Total meal	Admin. and audit	Total DCH: Dollars	Total DCH: Percent	Meal (percent)	Admin. and audit (percent)
1997[a]	$952,099	$809,639	$142,460	$871,012	$242,083	$487,300	$729,383	$141,630	−$81,087	−8.5	−9.9	−0.6
1998	1,026,020	875,034	150,986	693,686	257,400	289,518	546,918	146,768	−332,324	−32.4	−37.5	−2.8
1999	1,104,105	943,294	160,810	727,323	270,711	305,178	575,950	151,374	−376,781	−34.1	−38.9	−5.9
2000	1,186,699	1,015,754	170,945	758,701	284,903	321,110	606,013	152,688	−427,998	−36.1	−40.3	−10.7
2001	1,273,343	1,091,954	181,389	796,114	299,951	337,907	637,858	158,256	−477,229	−37.5	−41.6	−12.8
2002	1,365,473	1,173,027	192,446	835,559	315,070	356,536	671,607	163,952	−529,913	−38.8	−42.7	−14.8
1997–2002	6,907,739	5,908,702	999,035	4,682,396	1,670,179	2,097,550	3,767,729	914,667	−2,225,342	−32.2	−36.2	−8.4

[a] Tiering does not become effective until the beginning of the fourth quarter (July 1, 1997) of fiscal year 1997.

The costs of tiering for DCH providers will be addressed first and then followed by a discussion of the costs for families with children in tier II DCHs. The new administrative burdens that tiering imposes on DCH sponsors will be discussed next and then followed by an examination of the administrative costs for CACFP State agencies, NSLP State agencies, and NSLP school food authorities.

Implementation and use of the tiering system will have both implementation and periodically recurring costs for the entities discussed above. The implementation costs will depend highly on the specifics of the State and local CACFP procedures currently in place and on the reimbursement procedures selected under the new rule, and will therefore vary greatly across States and localities. Because of the lack of information on these current practices, quantification of the implementation costs, within a reasonable degree of accuracy, is precluded. It is recognized that these costs may be significant, especially for State CACFP agencies (sponsors will need more technical assistance). The recurring costs are more evident and quantifiable, and what follows is a discussion of the recurring costs the affected entities will incur.

I. Costs to Providers

For CACFP providers the costs of tiering will have an administrative burden component, but will be primarily financial, due to the lower meal reimbursement rates, and will fall on providers operating tier II DCHs tier II DCHs will experience a decrease in CACFP reimbursements; the majority of the $2.2 billion in projected savings is due to lower reimbursements to non-mixed tier II DCHs (a mixed tier II DCH is a tier II DCH where at least one child in care is documented income-eligible; meals served to such children are reimbursed at the higher rates). Non-mixed tier II DCHs comprise an estimated 64 percent of all DCHs (see Costs to Sponsors for explanation). For the average non-mixed tier II DCH, the July 1, 1997 tier II rate decrease will cause weekly CACFP revenues to decline 51 percent, from $82 to $402, which follows directly from the average DCH's weekly meal mix footnoted in table 3 and the meal reimbursements shown in table 2. Since the average DCH has about 6 children in care,[6] this $42 decrease ($82–$40) represents about $7 per child.

a. Potential Tier II Provider Responses to Lower CACFP Reimbursements

Providers of tier II DCHs will most likely respond to decreased CACFP revenues through some combination of raising fees, absorbing the loss, providing care for more children, and reducing operating costs. Studies of the day care market corroborate this. They find that in general providers will not try to pass all of the CACFP loss on to the families they serve,[3,4] but rather employ some of these other options as well.

The amount which non-low-income providers can pass on through higher fees will depend on the character of their local day care market. Tier II providers in markets that are competitive on the basis of fee will be discouraged from passing all of the loss on to parents, as they need to keep fees approximately in line with the local going rate to retain their customers.[4] Providers in less competitive markets, such as those where there is a child care shortage, will be able to raise fees and pass most of their loss along to parents. An example of a fee competitive market is one where there are several day care homes operating in a moderate income neighborhood, all having nearly equal appeal to parents and nearly equal fees, but with only a few of the homes being tier II DCHs (the rest being non-CACFP homes or tier I DCHs). Although the tier II DCH providers would be tempted to raise fees in response to the CACFP reimbursement rate decrease, the non-CACFP and tier I DCHs would probably leave their fees unchanged; their doing so may cause the tier II DCHs to leave their fees unchanged as well. Empirical data on the relative extent of these two market scenarios is unavailable. However, because the markets affected by tiering serve mostly non-low-income families who, if fees are raised, would probably choose to pay higher fees to stay with their current provider, fee competitive markets may be the less common variety.

Data from the 1990 Profile of Child Care Settings Study[3] (PCCS) and the 1976 National Day Care Home Study[3] (NDCH) provide information on the likelihood that providers will respond to decreased CACFP reimbursements by absorbing the loss or providing care for more children. The PCCS and NDCH studies indicate that most tier II CACFP providers are not in a position to completely absorb a significant portion of the reduction in meal reimbursements. The 1976–80 NDCH study found that homes like DCHs (sponsored and regulated) do not make even moderate operating surpluses (profits)- the mean net hourly wage for providers in regulated, sponsored homes was $1.92 (in 1976 dollars), 83 percent of the 1976 minimum wage rate of $2.30 per hour (all DCHs are sponsored and regulated, but not all sponsored, regulated homes are DCHs, i.e., participate in the CACFP). The PCCS study suggests that providers' economic situation may have even worsened since the NDCH study: PCCS found that in real dollars, fees for regulated, sponsored homes decreased between the period 1976–80 and 1990. Thus, the PCCS data suggests that providers in sponsored homes, such as DCHs, do not have much of an operating surplus to buffer a cut in subsidies. Other PCCS findings indicate that most providers will not consider taking more children into care as a means of increasing revenues to offset the decrease in CACFP reimbursements. PCCS found that most providers of sponsored, regulated homes are operating near their legal capacity and that over half of all such providers surveyed indicated they are unwilling to take more children into care.

b. Most Probable Provider Responses to Lower CACFP Reimbursements

The PCCS and NDCH data, and the data suggesting that some day care markets may discourage the raising of fees4 imply that in general tier II providers will respond to decreased meal reimbursements by reducing operating costs; absorbing a small portion of the decrease; and raising fees a modest amount, but will not respond by providing care for more children.

c. Effects on Non-Mixed Tier II Providers

Tier II providers who respond to decreased CACFP revenues by noticeably reducing operating costs or sharply raising fees may, however, only exacerbate their income shortage, as parents may be unwilling to accept the providers' decreased child care expenditures (reduced operating costs) or higher fees and could respond by moving their children to other providers, which would decrease the original provider's income until replacement children could be found. However, given that fees for DCHs (i.e., regulated and sponsored providers) tend to be higher than those found in unregulated

day care homes,[5,6] parents who patronize DCHs have demonstrated a willingness to pay a premium for regulated care and are therefore less likely to be sensitive to an increase in provider fees.

The new reimbursement rates will have a significant economic impact on non-mixed tier II DCHs. Based on FCS program data [2] and projected increases in the food at home series of the Consumer Price Index, when DCH reimbursement rates are first tiered on July 1, 1997 the weighted average per meal rate for non-mixed tier II DCHs will drop from the tier I level of $1.01 down to $0.49, a 51 percent decrease. The July 1, 1997 rate cut will cause the average non-mixed tier II DCH's weekly CACFP revenues to decline from $82 to $40, a $42 decrease (a 51 percent decline), where the average DCH serves an average weekly meal mix of 19 breakfasts, 31 lunches/suppers, and 31 supplements [2] to six children.[6] These estimates incorporate the dynamic nature of the regulated day care market, where the annual provider turnover rate is approximately 20 percent [1]: they assume that lowering the meal reimbursement rates will decrease the incentive for day care homes to join the CACFP and also increase the rate of departure for existing DCHs. Numerically, this translates into the expectation that the lower rates will cause the annual rate of growth in DCHs to decrease from around 5 percent to about 2.5 percent.

d. Effects on Mixed Tier II Providers

Although minor in comparison with non-mixed tier II CACFP revenue decreases, tiering's actual meal count system will place a new administrative burden on some portion of the sub-group of mixed tier II providers (an estimated 10 percent of DCHs are mixed tier II) whose sponsors require them to use an actual meal counts system (some providers already keep such counts). There will be no new burden for providers using either of the ''simplified'' meal counts systems (as explained in the Costs to Sponsors, Sponsor Meal Claiming Burden section). In an actual counts system, the mixed tier II DCHs would provide the sponsor, for each child in care, the number of reimbursable meals the child was served, by meal type and would also identify each child by name. This reporting requirement represents an increase in burden over the current system where some providers only record and provide sponsors with the total number of reimbursable meals served, by meal type. Few DCHs are expected to incur this burden, however, as this system is burdensome for the sponsors; it is being assumed that only 5 percent of sponsors will choose an actual count system, and that in addition, all such sponsors will be small-serving no more than 50 DCHs, on average only 30 (see the Costs to Sponsors, Sponsor Meal Claiming Burden section). The estimated weekly provider burden associated with an actual count system in an average DCH (serving 6 children [6] and operating 5 days a week [1]) is 30 minutes, which assumes a burden of 1 minute per child per day. The estimated annual burden for such a home is therefore 25 hours. This translates into an annual fiscal er provider. This calculation assumes that providers of regulated, sponsored care are making about $5.30 per hour for their services ($5.30 is an inflation adjusted version of the NDCH study [5] finding that providers of sponsored, regulated homes earned an average of $1.92 per hour in 1976).

II. Costs to Families

Tiering imposes few costs on low-income families. One cost, limited to low-income families with children in mixed tier II DCHs, is their being asked to provide household income information. Although the families are not obligated to provide this information, based on NSLP data,[7] it is expected that 90 percent will (see Costs to Sponsors section for explanation). Providing this information consumes time and could lessen a family's privacy. Sponsors have the authority to verify the income information at a later time, in which case the family would be contacted and asked to submit supporting documentation for the income figures provided, representing a second burden and further intrusion on family privacy. Despite being authorized to conduct income verifications, few sponsors are expected to do so in light of the associated burden. As explained below, there may also be a limited number of low-income families with children in non-mixed tier II DCHs; these families will experience costs similar to those described below for non-low-income families.

Tiering is intended to reduce subsidies to non-low-income families, which as previously stated, is the intent of P.L. 104–193. This reduction has potential cost implications for these families. The Costs to Providers section explained that providers will likely respond to the decrease in CACFP reimbursements through some combination of reducing operating expenses, raising fees, and absorbing the loss. At one extreme of the day care market, an area not fee-competitive in which DCH providers have the freedom to increase fees to completely offset the reduced reimbursements, fees could increase by about $7 a week per child. This would recent increase over the average weekly fees, $70, that parents of non-low-income children currently pay for care ($70 is an inflation-adjusted version of the CCFP Study's figure of $49).[1] At the other extreme of the day care market, a highly fee competitive setting, fees would remain unchanged. Although empirical data on the relative extent of these market types is unavailable, data from the Costs to Providers section suggest that the former market type may be more common: first, the markets affected by tiering are serving non-low-income families who, if fees are raised, would probably choose to pay the higher fees to stay with their current provider; and second, families patronizing DCHs, which tend to charge higher fees than unregulated providers, have demonstrated a willingness to pay more for the higher quality of regulated care.

a. Competitive Markets

In child care markets where providers need to hold fees down to retain customers, providers are constrained to react to the rate decrease through some mixture of absorbing the cut and cutting operating costs. The providers being considered here are primarily those operating non-mixed tier II DCHs, the group that will experience the greatest tiering related CACFP revenue drop. To cut costs, these tier II providers may change their management practices relating to food service and developmental opportunities and materials, among other potential changes. Although intended as cost cutting measures, some of these changes could have effects on the children in care. In the area of developmental opportunities and materials, lower reimbursements may leave providers somewhat less able to afford the non-essential games, books, audio or video tapes, etc. that were attainable when CACFP reimbursements were covering a greater proportion of food expenses. There are also a number of areas in food service where providers could reduce costs, and these would impact children in tier II DCHs. One way to reduce costs would be deciding that certain snacks under the old, higher CACFP reimbursements will not be served under the new, lower rates, such as an afternoon snack. Providers might also respond by decreasing meal portions, although by specifying minimum serving sizes, CACFP regulations limit the extent to which this could be done. Other means of cutting food service costs could include replacing more expensive ingredients and food items with less expensive ones. While purchasing lower quality items and ingredients may have detrimental nutritional implications, substituting something more affordable could also represent a nutritional improvement if wise choices are made. The CACFP study mandated by P.L. 104–193 will compare the nutritional quality of meals served in post-tiering tier II DCHs with the quality of meals served in those DCHs before tiering, among other pre/post-tiering comparisons.

Should a tier II provider choose to cut operating costs, a family may find the resulting conditions unacceptable and seek out another provider. The search for a new provider entails costs in the time spent finding a new provider, the potential for lost wages, and the potential for subsequent transportation and added inconvenience costs if the more suitable providers are not as conveniently located as the original caregiver. It is also possible that providers constrained to hold fees down will exit the DCH market, which would also require a family to find another provider.

Under the fee competitive market scenario just considered, which primarily affect non-low-income families, there is the potential that some of the low-income children in mixed tier II DCHs will experience some of the same costs the children in non-mixed tier II DCHs will experience. Although some of the meals served in a mixed tier II DCH will be eligible for the higher reimbursement rates, others will not. If the provider is constrained to not raise fees to recoup the decreased reimbursements for the non-low-income families, the provider will experience a net decrease in revenue as discussed above, the provider will likely respond to this net decrease by either reducing operating costs or absorbing the loss. Reducing operating costs would affect the low-income children in care. However, USDA believes only 10 percent of all DCHs will be mixed and that only a portion of these mixed homes are in competitive fee markets; under these conditions, few low-income children would be affected.

b. Non-Competitive Markets

In the other child care market being considered, where providers are not as constrained to hold fees down, providers will likely respond to the rate decrease primarily through increased fees. As suggested earlier in this section, because tiering mainly affects non-low-income families who will likely choose to pay increased provider fees, this type of market may be more common than the competitive fee variety. In non-fee competitive markets, families can respond to increased fees by either paying the higher fees, moving their children to more affordable providers, or dropping out of the labor force (fully or in part) to care for their children. Each choice has different costs for families. In cases where the parents elect not to move the child, the parents will be assuming greater responsibility for food costs than under the previous system where the Federal government was performing that function (the intent of P.L. 104–193). In the case where the provider raises fees enough to completely offset the reduced reimbursements, fees could increase by about $7 a week per child, representing a 10 percent increase over pre-tiering average fees.1 In the second case, where the parents move a child to achieve lower fees, the child may have to break established relationships with the current provider and other children in care. The third alternative, dropping out of the labor force, would presumably occur rarely, as the raising of fees will primarily affect higher income families who will probably choose to absorb the increase.

c. Effects of Tiering on Child Care Choices

Studies show that child care regulations enforce practices beneficial to childhood development,[5] but the preceding discussion on the relationship between lower meal reimbursements and higher fees implies that under tiering the number of families choosing sponsored, regulated care may decrease. The 1976–80 NDCH Study compared fees among unregulated providers; regulated but unsponsored providers; and providers who are both regulated and sponsored. The study found that providers who are both regulated and sponsored had the highest fees. In the years since that study, fees charged by regulated and sponsored providers have decreased until equaling the fees charged by regulated but unsponsored providers.[3] This equaling of fees in regulated homes coincided with the post-1978 rapid growth of DCHs. CACFP reimbursements—available only to sponsored, regulated homes—may have played a role in bringing down fees charged by regulated, sponsored providers to equal fees of regulated, unsponsored providers, which suggests that tiering's lowering of CACFP rates may cause regulated, sponsored fees to rise. Even if the post-1978 decline in regulated, sponsored provider fees is attributable to other factors, it is likely (as discussed in the Costs to Providers section) that decreased CACFP reimbursements will cause regulated, sponsored providers to raise fees, at least in some markets, which may shift children into more affordable, possibly unregulated homes. Similarly, the decreased CACFP reimbursements might cause some currently regulated and sponsored providers to consider moving out of regulated care. Therefore, the possibility that CACFP rates will no longer encourage the placement of children in regulated care is another cost that tiering may bring to non-low-income children and even some low-income children.

d. Intended Effect of Tiering

An important fact, worth reiterating, is that tiering primarily affects families with incomes above 185 percent of the Federal income poverty guidelines (non-low-income), as intended by P.L.104–193 The only low-income families potentially affected by tiering will be those with children in tier II DCHs. This presumably encompasses few families, as it is believed, as mentioned earlier, that (1) only 10 percent of all DCHs will be mixed (having both non-low-income and documented low-income children in care) and that only 40 percent of the children in an average mixed DCH will be low-income (see Tier II Household Income-Eligibility Determination Burden under Costs to Sponsors); and (2) that the clear majority of all other low-income children will be in tier I DCHs. Similarly, the providers affected by tiering will presumably be all non-low-income, since providers with incomes below 185 percent of the Federal income poverty guidelines are eligible for tier I status. The Federal income poverty guidelines are designed to take into account family size, so that a given household will qualify for low-income status at a lower income level than will a household that has more children.

III. Costs to Sponsors

The two tier structure will impose several new administrative burdens on organizations that sponsor DCHs, including determining and documenting which DCHs and children are entitled to receive the higher set of reimbursement rates; verifying the income of all providers who qualify for tier I status based on provider income; and collecting and reporting separate tier I and tier II meal, enrollment, and provider counts.

a. Tiering Determination Burden

All sponsors will be responsible for determining whether each of their DCHs is tier I or II. A sponsor can approve a DCH for tier I status if the DCH is located in a low-income area or the provider is low-income. A low-income area is defined as one in which the local elementary school has at least one-half of its enrollment approved for free or reduced price NSLP lunches, or an area in which at least one-half of the resident children are low income, according to the most recent census data. A sponsor can also approve a DCH for tier I status if sponsor can demonstrate low-income status (income no more than 185 percent of the Federal income poverty guidelines). If a sponsor finds a provider to be low-income, the sponsor must verify the provider's income before formally approving the DCH for tier I status. Sponsors must annually re-determine every Tier I eligibility determination based on a provider's income. Because verification is a non-trivial burden to sponsors, it is expected that whenever possible sponsors will approve providers for tier I on the basis of area eligibility. Area eligibility determinations offer sponsors the added benefit of being valid for three years when school data is used and until more recent data is available, when census data is used, at most ten years.

The verification that sponsors will perform on income-approved tier I providers consists of obtaining pay stubs, tax returns, or some other form of independent income documentation to establish that the information provided on providers' tier I income applications is accurate. The proposed rule mandates this verification to protect the government against providers' financial incentive to qualify for tier I; the average tier I provider would receive 42 more dollars a week in CACFP meal reimbursements in 1998 than would the average non-mixed tier II provider (as was explained in the Costs to Providers section). Collecting corroborating income documentation from providers for tier I income eligibility determinations represents an increase over the current CACFP DCH application review requirements, which were established by the Omnibus Budget Reconciliation Act of 1981, P.L. 97–35. P.L. 93–35 eliminated CACFP DCH meal reimbursements for providers' own children in care, unless a provider submits an application demonstrating low-income status. Sponsors are not required to obtain supporting income information for these applications and typically make eligibility determinations based on the application information alone. After P.L. 104–193 providers will submit enrollment applications, which have different sponsor verification requirements. The first type will be submitted by providers seeking to qualify for tier I, so that, if approved for tier I, all meals served in the applying provider's home, including those to the provider's own children in care, would be reimbursed at the higher rates. The second type of application would be submitted by providers approved for tier I by area eligibility seeking to claim meals served to their own children in care. P.L. 104–193 does not supersede P.L. 97–35, so the requirement that a DCH provider demonstrate low-income status in order to claim meals served to the provider's own children will remain in effect. For income applications for tier I status, P.L. 104–193 requires that income verification (collection of substantiating income documentation) be performed. For applications from area-approved tier I providers seeking to claim meals served to their own children, sponsors will continue to approve these applications based on application content alone, which entails no new burden for sponsors.

Provider income data from special tabulations of PCCS data[6] together with data on average household sizes[8] indicate that about 20 percent of all DCH providers are low-income and are therefore eligible for tier I on the basis of income. Empirical data on the percentage of DCHs that qualify for tier I on the basis of area eligibility is unavailable. An estimate for this percentage was derived using (1) the finding from the CCFP Study that 30 percent of all enrolled DCH children are low-income and (2) the assumption that DCH children are equally

distributed across all DCHs, i.e., 10 percent of DCHs provide care for 10 percent of total DCH enrollment, regardless of the DCH's tiering status. Applying this distribution assumption to income-eligible tier I DCHs (20 percent of all DCHs) implies they enroll 20 percent of total DCH enrollment. Applying the distribution assumption to mixed tier II DCHs, which comprise 10 percent of all DCHs implies they enroll 10 percent of total DCH enrollment. Then, taking the assumption that 40 percent of mixed tier II DCH enrollment is low-income and applying it to the mixed tier II enrollment percentage (10 percent of total DCH enrollment) implies the low-income children in mixed tier II DCHs comprise 4 percent of total DCH enrollment (4% is 40% of 10%). Therefore, the enrollment in income-eligible tier I DCHs and mixed tier II DCHs, whose meals are all reimbursed at the higher rates, represents 24 percent of total DCH enrollment. The CCFP Study's finding that 30 percent of total DCH enrollment is low-income was then used as a basis for assuming that approximately 30 percent of all DCH meals will be reimbursed at the higher rates. When the 30 percent assumption is compared to the 24 percent of DCH enrollment receiving higher rates (in income-eligible tier I and mixed tier II DCHs), it implies that the residual percentage of enrollment whose meals are reimbursed at higher rates, 6 percent of total (30–24), is receiving care in area-eligible tier I DCHs. Since 6 percent of total DCH enrollment resides in area-eligible tier I DCHs, the enrollment distribution assumption implies area-eligible tier I DCHs represent 6 percent of all DCHs. With 20 percent of all DCHs being income-eligible for tier I and another 6 percent being area-eligible for tier I, a total of 26 percent of all DCHs are expected to become tier I DCHs.[m]

It is assumed that a substantial proportion of low-income, income-eligible tier I providers reside in low-income areas, thereby making them area-eligible also. The burden associated with verifying incomes for income-eligible providers will presumably cause sponsors to approve DCHs for tier I on the basis of area eligibility whenever possible. It was therefore assumed that one-half of the income-eligible DCHs (10 percent of total) will be approved for tier I on the basis of area eligibility rather than income, which together with the 6 tier I by area eligibility. The remaining one-half of tier I income-eligible DCHs, 10 percent of total, will be approved on the basis of income.

The dynamic nature of the DCH market will increase sponsors' tiering determination burdens. Data from the CCFP Study indicates the DCH market has an annual provider turnover rate of approximately 20 percent.[1] This volatility will lead sponsors to make more tiering determinations than would be necessary for a stable DCH population. See section e: Quantification of New Burdens for Sponsors for the quantification of sponsors' tiering determination burden.

b. Household Income-Eligibility Determination Burden on Sponsors

This interim rule mirrors P.L. 104–193 in the method it prescribes for approving low-income children in tier II DCHs for the higher meal reimbursement rates. Tier II DCHs wishing to secure higher reimbursements for their low-income children (''mixed'' tier II DCHs) are to direct their sponsor to collect income information from the households of the children in care. Sponsors so directed must request information from every household served by the requesting DCH. Sponsors have the responsibility of determining the income-eligibility for each responding household. Meals served to children with household incomes not exceeding 185 percent of the Federal income poverty guidelines—income-eligible/low-income children—are eligible to receive the higher reimbursement rates. Also eligible for the higher rates are meals served to children who participate in or live in households that participate in any Federal or State means tested program with an equivalent income eligibility standard-at or below 185 percent of the Federal income poverty guidelines.

Sponsors must maintain supporting documentation for all children approved for higher meal reimbursement rates. At least annually, sponsors must re-determine the eligibility of all children previously deemed income-eligible and also give all children previously deemed not income-eligible another opportunity to demonstrate low-income status. For the purposes of this analysis, it is assumed that sponsors will meet the annual re-determination requirement by cycling through each of their mixed DCHs once a year and making income-eligibility determinations on all children currently enrolled at that time. Sponsors must also make income-eligibility determinations for children who enter a mixed tier II DCH after the sponsor has made its annual income-eligibility determinations for that DCH. The schedule that sponsors will use to perform these latter income determinations is determined by the sponsor's choice of meal claiming system. Although it is providers who decide whether the sponsor must make income-eligibility determinations, sponsors decide which meal count system the sponsor and all its DCHs will use. The meal count system chosen determines the schedule on which income-eligibility determinations are made for children who enter mixed DCHs after the annual eligibility re-determination review has occurred. Sponsors can choose between an actual counts system and a ''simplified'' counts version. Each of these systems and its associated income-eligibility determination schedule is described below.

The interim rule does not prescribe any additional income eligibility determination requirements, beyond annual re-determinations, for sponsors using an actual counts system. Rather, the provider's incentive structure under this system will determine the income-eligibility determination schedule used. In this system, providers of mixed tier II DCHs must report the number of meals served to each child by type and identify each child by name. Sponsors then use income-eligibility information to determine which set of reimbursements each child's meals are entitled to, with meals served to documented income-eligible children entitled to reimbursement at the higher rates. With reimbursements being determined on a per-child basis in actual meal count systems, providers of mixed tier II DCHs have the incentive to maximize the number of documented income-eligible children in their care. A provider can do this by directing its sponsor to make an eligibility determination on each new child upon the child's entering the provider's DCH. Assuming that most providers in actual count systems will behave in this manner, sponsors in these systems will be making income-eligibility determinations on an irregular, ongoing basis.

The interim rule prescribes the income-eligibility determination schedule that sponsors employing simplified counting must use to determine the income-eligibility of children who enter mixed tier II DCHs outside the sponsor's annual income-eligibility determination cycle. The schedule requires that at least semi-annually, sponsors make income-eligibility determinations on all children who enter a mixed DCH in the prior 6 months. Given that sponsors are already required to annually re-determine eligibility, sponsors using a simplified counting system will likely perform income-eligibility determinations twice a year: annual re-determinations at the beginning of the year and a second determination at mid-year for those children who entered a mixed DCH sometime in the preceding 6 months.

The two meal count systems will require sponsors to make near equal numbers of eligibility determinations; the burdens are expected to be equal. See section e: Quantification of Burdens for the burden estimates.

c. Data Collection and Reporting Burden for Sponsors

Tiering will place several new, although minor, reporting requirements on sponsors. Sponsors will now have to annually collect and report to their State CACFP agency separate enrollment counts for tier I and tier II DCHs and an enrollment count for documented income-eligible children in mixed tier II DCHs (those DCHs serving at least one documented low-income child). Sponsors must also annually report the number of tier I and tier II DCHs they sponsor. Finally, in the management plan that every sponsor submits to its agency, the sponsor will now have to include a description of how it will make DCH tiering determinations.

d. Sponsor Meal Claiming Burden

Under tiering, sponsors will have new burdens related to meal counting and claiming. Before tiering, sponsors were only required to claim meals by meal type. Under tiering, sponsors will have to claim meals both by reimbursement category and, within each category, by meal type. The claiming of meals served in tier I and tier II DCHs remains straightforward. It simply entails separating claims submitted by tier I and tier II DCHs, which amounts to categorizing the meals, and then, within each category, summing meal counts by type. In contrast, claiming for mixed DCHs requires that for each mixed DCH sponsors split out the meals by reimbursement category, which will typically be a more time consuming process than that for non-mixed DCHs. After the

meals from mixed DCHs are separated by category, the meals are summed, within each category, by meal type, just as was done for claims from tier I and tier II DCHs. The method that sponsors use to split out mixed DCH claims depends on whether the sponsor is using an actual or simplified meal counting system, as described below.

As previously noted, in an actual count system, mixed tier II DCHs record the number of meals served to each enrolled child, by meal type, and provide the sponsor with a claim that lists the meals served to each child by type and identifies each child by name. In such a system, the sponsor splits the meals into reimbursement categories by determining the appropriate reimbursement category for each child's meals based on the child's income eligibility status—the reason each child is identified by name. In contrast, in a simplified count system, the sponsor splits the counts into the two reimbursement categories by applying either blended rates or claiming percentages to the provider's aggregated counts (both blended rates and claiming percentages produce identical claims). In the case of claiming percentages, a sponsor computes, for each DCH, the number of meals of each type entitled to the higher reimbursements by multiplying the total number of meals claimed of that type by the proportion of children in that DCH who have been determined income-eligible (all other meals are reimbursed at the lower reimbursements). The procedure for blended rates is essentially the same. In simplified count systems, the semi-annual collection of income information described in section b: Household Income-Eligibility Determination Burden is used to update the claiming percentages/blended rates for each DCH every six months. The updated claiming percentages/blended rates reflect the current proportion of income eligible children in the DCH.

Simplified counting is less burdensome to sponsors than an actual count system. Actual counts require the sponsor to compare the provider's meal claim against a list of the DCH's income-eligible children to identify which children's meals are entitled to the higher rate. The sponsor then groups meals by reimbursement category and finally, sums by type within each category to produce an aggregated count of meals by category and by type. In contrast, to reach the same result in a simplified system, the sponsor need only multiply the aggregate meal counts by the DCH's claiming percentages/blended rates. Because of the relative ease of meal claiming in a simplified counts system, it is expected that only 5 percent of all sponsors will opt for actual counts and that all will be small sponsors (serving no more than 50 DCHs).

e. Quantification of New Burdens for Sponsors

To quantify the effects of this interim rule on sponsors, a framework of estimates and assumptions, based on previous studies of the program and current program data, was constructed. Creating this framework, which enables the scaling of burden estimates according to sponsor size, produces more precise burden estimates. The first step in creating it, was dividing the approximately 1,240 current sponsors into three groups, as shown in table 5: (1) small sponsors which serve no more than 50 DCHs, on average about 30 DCHs; (2) medium sponsors which serve between 51 and 300 DCHs, on average about 200; (3) large sponsors which serve more than 300 DCHs, on average about 400.[1,2]

TABLE 5.—SPONSOR AND DCH CHARACTERISTIES

Sponsor characteristics	Sponsor size		
	Small	Medium	Large
Percent of all Sponsors	50%	30%	20%
Percent of all DCHs Served	9%	40%	51%
Average Number of DCHs Served per Sponsor	30	200	400
Number of Sponsors (Total = 1,240) in Category	620	372	248

Based on these definitions, 50 percent of all sponsors are small in size and account for 9 percent of all DCHs; 30 percent are of medium size and account for 40 percent of all DCHs; and 20 percent are large and account for 51 percent of all DCHs.[1,2] Next, based on DCH providers' and enrolled children's income data, respectively from special PCCS tabulations[6] and the CCFP Study[1] and other assumptions discussed above under Tiering Determination Burden, it was estimated that 26 percent of all DCHs will be approved for tier I; 64 percent will be tier II, and 10 percent will be mixed tier II, as shown in table 6.

TABLE 6.—DCH CHARACTERISTICS

DCH Type	Percent of All DCHs
Tier I	26
Area Eligible Only	6
Income Eligible Only	10
Area & Income Eligible	10
Sum	26
Approved by Area	16
Approved by Income	10
Sum	26
Tier II	74
Mixed	10
Non-Mixed	64

Finally, it was assumed that 40 percent of sponsors will serve at least one mixed tier II DCH. This last assumption is rooted in the finding from the CCFP study[1] that almost 70 percent of DCH children are non-low-income. When this finding is coupled with the assumption that smaller sponsors are more likely to serve economically homogeneous DCHs, by virtue of their limited geographic coverage, the implication is that small sponsors are less likely than medium or large sponsors to serve mixed tier II DCHs. This conclusion, together with the CCFP Study[1] data that indicates nearly 50 percent of all sponsors are small, is the basis for assuming 40 percent of sponsors will serve at least one mixed tier II DCH. Based on these estimates and assumptions, the approximately 193,000 DCHs in operation[2] were distributed across the three size categories of sponsors based on the number of mixed tier II DCHs predicted for the average sponsor in each sponsor category and the relative sizes of the tier I and tier II DCH populations.

The estimates for new sponsor burden contained in the interim rule are presented in table 7. Shown are estimates for the annual burden hours imposed on each sponsor category, and the percentage of sponsors affected within each sponsor category. Of the listed burdens, only Meal Claiming recurs periodically (monthly). The other burdens occur only once or twice a year (with the exception of household income determinations in an actual meal count system, but the number of sponsors involved is minimal, 5 percent of total, i.e., 60). The estimates make the assumption that economies of scale are realized only for Meal Claiming burdens, where the recurring nature of the burden would presumably give larger sponsors a sufficient incentive to establish efficient meal claiming systems.

TABLE 7.—ESTIMATED ANNUAL SPONSOR BURDEN FROM TWO TIER DCH SYSTEM

Burden	Estimated Annual Sponsor Burden by Sponsor Size (Hours)			Estimated Percent of Sponsors Affected in Each Size Category		
	Small	Medium	Large	Small	Medium	Large
Tiering Determinations:						
1. Low income Providers (Includes Verification)	4	52	96	100	100	100
2. Area Eligibility	2	28	51	100	100	100
Tier II Household Income-Eligibility Determinations	9	40	80	27	53	50
Data Collection and Reporting [a]	4	15	28	100	100	100
Meal Claiming:						
1. Actual Counts System (with mixed tier II DCHs)	20	N/A [b]	N/A [b]	10	N/A [b]	N/A [b]
2. Simplified Counts System (with mixed tier II DCHs)	10	45	67	16	52	50
3. No Mixed Tier II DCHs	5	22	34	74	48	50

[a] Includes tier I, tier II, and tier II low-income enrollment counts; tier I and tier II DCH counts; and description of tiering determination method in sponsor management plan.

[b] Due to the burden associated with actual meal counts systems, it is expected that only small sponsors will choose actual counts.

The tiering determinations burden estimates were calculated using data from the CCFP Study [1] and special tabulations from PCCS [6], which indicate that 26 percent of all DCHs are eligible for tier I and the assumption that sponsors will choose to approve providers for tier I on the basis of area eligibility whenever possible. Thus, it is assumed that 16 percent of all DCHs will be approved for tier I using area eligibility information, while the remaining tier I eligible DCHs (10 percent) will be approved using provider income information. For the burden estimate, these percentages were assumed to hold for the average sponsor in each sponsor category so that, for example, the average small sponsor (serving 30 DCHs) with its 4.8 tier I homes would approve 3.0 of the 4.8 on the basis of area eligibility (4.8 * 16% / 26%) and the remaining 1.8 DCHs on the basis of the provider's income (4.8 * 10% / 26%). The estimates incorporate the dynamic nature of the DCH market, which has an annual provider turnover rate estimated to be between 18 and 25 percent.[1] This volatility will require sponsors to make more tiering determinations than would be necessary for a stable DCH population. Finally, the estimates for area eligibility assume that sponsors identify income-eligible DCHs using sponsors' preexisting knowledge of economic conditions in areas where DCHs reside and that sponsors are thereby able to easily identify DCHs lying far outside all income-eligible areas. This approach would allow sponsors to focus their efforts on DCHs with reasonable probabilities of qualifying for tier I by area eligibility. This analysis assumes such an approach will be taken and that the average sponsor will consider 3 homes for low-income area eligibility for every 2 it finds eligible and approves.

The tier II household income-eligibility determinations estimates were calculated by estimating the income-eligibility burden associated with the average DCH and then multiplying that figure by the average number of DCHs a sponsor in each of the three categories oversees.[1] The number of children in care in an average DCH was used as the starting point.[6] This figure was then inflated to account for the fact that on average, there is a 30 percent turnover of children every 6 months in the average day care home.[9] This inflated figure represents the number of children who could potentially submit an application over a year's time. From this group of potential applicants, the number of submitted applications was calculated using an assumed 90 percent application response rate (based on the NSLP's 80 percent rate) [7] and the assumption that on average about 40 percent of the children in mixed tier II DCHs are income-eligible. There is a clear financial incentive for providers to encourage their low-income families to submit income information to sponsors. This incentive and providers' close relationships with parents suggest that providers will attempt to persuade parents to provide the income information and will thereby achieve a response rate greater than the NSLP's 80 percent; ninety percent was chosen. The assumption that 40 percent of children in mixed tier II DCHs are income-eligible. There is a clear financial incentive for providers to encourage their low-income families to submit income information to sponsors. This incentive and providers' close relationships with parents suggest that providers will attempt to persuade parents to provide the income information and will thereby achieve a response rate greater than the NSLP's 80 percent; ninety percent was chosen. The assumption that 40 percent of children in mixed tier II DCHs are income eligible is based on two assumptions: (1) most DCHs with more than 60 percent of their enrollment income-eligible will be tier I and 2) some tier II DCH providers that serve one or two income-eligible children will not realize or avail themselves of the children's low-income status and therefore will not ask their sponsor to determine the children's income-eligibility (placing the DCH in the non-mixed tier II category). The two preceding assumptions suggest a percentage below 50 percent; forty percent was chosen.

The data collection and reporting burden was calculated assuming that the average sponsor will spend about 12 hours complying with the new requirements in this area, with 10 of these hours for the new data related requirements and the remaining 2 for the requirement that each sponsor now provide a description of its plan for making DCH tiering determinations in its management plan. The 12 hour burden implies annual burdens of 4, 15, and 28 hours for small, medium, and large sponsors, respectively. These estimates are consistent with this burden being an expansion on the current CACFP requirement that sponsors report quarterly the number of DCHs served and the DCHs' enrollment and submit annually a sponsor management plan.

The meal claiming burden was calculated assuming that the monthly burden resulting from the new meal claiming requirements will be 2 hours for the average sponsor. This weighted average implies a burden that increases with sponsor size and the number of mixed tier II DCHs being served. The estimates make the assumption that an actual counts system will impose twice the meal claiming burden of a simplified counts system due to the relative difficulty that sponsors using actual counts are expected to have in producing meal claims broken down by reimbursement category and meal type (relative to the effort required under a simplified counts system). The estimates further assume that among sponsors using a simplified count system, the average meal claiming burden for sponsors without any mixed DC one-half the average burden for sponsors serving mixed DCHs. This assumption is consistent with the lower level of effort required to process meal claims from non-mixed DCHs. In addition, as described above, the estimates assume economies of scale so that the burdens are not directly proportional to the number of DCHs a sponsor serves.

Table 8 translates the burdens displayed in table 7 into fiscal costs. The fiscal costs were produced assuming that wage rates for employees of child care centers3, $8.00 per hour in 1997 dollars (which has been adjusted for inflation), are reasonable proxies for the wage rates of workers in DCH sponsors. The table implies that the annual increase in administrative costs due to tiering, for the average small, medium, and large sponsor, are about $160, $1,200, and $2,100 (in 1997 dollars), respectively. These costs represent less than one percent of the total annual administrative payments the average small, medium, and large sponsor would receive from USDA (in 1997 dollars):

$27 thousand, $150 thousand, and $270 thousand (in 1997 dollars), respectively.

TABLE 8 [a].—ESTIMATED ANNUAL SPONSOR FISCAL COST FROM TWO TIER DCH SYSTEM

Burden	Estimated Annual Sponsor Fiscal Cost by Sponsor Size (In 1997 Dollars)			Estimated Percent of Sponsors Affected in Each Size Category		
	Small	Medium	Large	Small	Medium	Large
Tiering Determinations:						
1. Low Income Providers (Includes Verification)	$32	$416	$768	100	100	100
2. Area Eligibility	16	224	408	100	100	100
Tier II Household Income-Eligibility Determinations	72	320	640	27	53	50
Data Collection and Reporting [b]	32	120	224	100	100	100
Meal Claiming:						
1. Actual Counts System (with mixed tier II DCHs)	160	[c]N/A	[c]N/A	10	[c]N/A	[c]N/A
2. Simplified Counts System (with mixed tier II DCHs)	80	360	536	16	52	50
3. No Mixed Tier II DCHs	40	176	272	74	48	50
Weighted Average Cost	158	1,201	2,124			
Average USDA Administrative Payments, Annual	27,000	150,000	270,000			
Wght. Avg. Cost as Percent of Admin. Payments	0.6	0.8	0.8			

[a] The sponsor costs shown in table 8 equal the burden hours multiplied by a wage rate of $8.00/hour, as described in the text.
[b] Includes tier I, tier II, and tier II low-income enrollment counts; tier I and tier II DCH counts; and description of tiering determination method in sponsor management plan.
[c] Due to the burden associated with actual counts systems, it is expected that only small sponsors will choose actual counts.

IV. Costs to CACFP State Agencies

The costs to CACFP State agencies consist of their being required to provide sponsors with low-income area eligibility data; increased requirements related to sponsor review, particularly the auditing of the documentation for income-eligible children; and their obligation to provide sponsors with technical assistance. In terms of area eligibility data, these agencies will be responsible for providing (1) census data identifying all State census blocks where at least 50 percent of the children are from low-income households (no more than 185 percent of the Federal income poverty guidelines) and (2) an annually updated list of all State elementary schools that have more than 50 percent of their enrollment certified to receive free or reduced-price lunches under the NSLP (implies hof no more than 185 percent of Federal income poverty guidelines). The agencies' other responsibility relating to area eligibility data is determining in which instances census data should be used over NSLP information: The interim rule states that sponsors are in general supposed to use the most recent school data available in making tiering determinations, but that the State CACFP agency should determine when census data should supersede it, by following instructions in forthcoming guidance from USDA. For the average State CACFP agency, it is estimated that its obligation to provide sponsors with elementary school data annually and providing census data as it becomes available represents an average annual burden of 23 hours, which assumes each instance of data transmittal and subsequent follow-up takes 1 hour. This estimated burden is equivalent to $184 using the same wage assumptions used in table 8.

Tiering will also increase State agencies' sponsor review requirements. When reviewing sponsors, State agencies will now have to review the documentation used to deem children in tier II DCHs income-eligible for the higher meal reimbursements as well as the documentation for tier I providers approved on the basis of income. However, the agency is only held responsible for ensuring that the application form is completed correctly and that the stated income actually falls below 185 percent of the Federal income poverty guidelines. The state is given the option to verify the documentation, but because of the amount of time involved in verification, it is expected that very few will routinely do so. The agencies are also responsible for ensuring that the most current data available was used in making area eligibility determinations (a negligible burden), but are not required to verify the determinations. For the average State CACFP agency, it is estimated that performing these reviews amounts to an annual burden of 23 hours, with some States expending much less than this amount and others much more, depending on the size and number of sponsors in the State. This estimated burden is equivalent to $184 using the same wage assumptions used in table 8.

State CACFP agencies will likely see an appreciable increase in their training and technical assistance burden as the transition to the new two tier system is made. Under the new system, State agencies will have to provide new guidance and training on all new aspects of CACFP introduced by tiering, for example, DCH tiering determinations, new meal counting and claiming procedures, and new data reporting requirements. This burden will likely persist for the first several years the new system is in place. It is believed that the new training and technical assistance burdens represents about 10–20 hours of new burden per sponsor per year for a State agency. For the average State, this implies an annual burden of between 230 and 460 hours (between $1,840 and $3,680) for the first several years of tiering and presumably abating thereafter. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) provides some funds to help State CACFP agencies make the transition. It directs the Secretary of Agriculture to set aside $5 million of fiscal year 1997 CACFP funds for one-time grants to State CACFP agencies. These grants must be used to aid States, sponsors, and DCHs with making the transition to the new system. P.L. 104–193 allows each of the 54 State agencies to retain up to 30 percent of its total grant for State agency use. If all States agencies retained the maximum allowable, a total of approximately $1.5 million would be retained at the State level, with the remaining $3.5 million going to DCHs and their sponsors.

The interim rule adds a new requirement to the management plans that sponsors must submit annually. Now, each sponsor must describe the approach it will use to make DCH tiering determinations. Reviewing this component of the plan will presumably place minimal additional burden on the State agency.

There is the potential that in some States the decreased CACFP reimbursements will lead to an increase in the State-wide average fee charged by providers. This increase may have the effect of increasing State expenditures for subsidized child care, as a State's subsidized care payments are often based on the average fee that providers in the State are charging. Being unable to predict a numerical value for the effect the reimbursement rate cut will have on provider fees, as discussed previously under Costs to Providers, quantifying this potential cost to States is precluded. However, this interim rule does not require States to increase their payments for subsidized child care.

V. Costs to NSLP State Agencies and NSLP School Food Authorities

Under P.L. 104–193, State NSLP agencies are required to annually provide a list of all State elementary schools in which at least 50 percent of the enrollment is certified to receive free or reduced-price NSLP lunches. However, these agencies do not currently collect school-level information. NSLP School Food Authorities (SFAs), which are generally school districts, are the only

entities other than the schools that collect this data. SFAs are also more able than schools to provide the data to the NSLP State agency. The interim rule accommodates this situation by directing SFAs to inform their State NSLP agency of the elementary schools that have at least 50 percent of their enrollment certified to receive free or reduced-price NSLP lunches. It is estimated [10] that roughly 5,000 SFAs will contain the approximately 11,000 elementary schools meeting this criterion, and that the annual average reporting burden on an SFA will be roughly 1.5 hours ($12). The NSLP State agencies will receive the lists of elementary schools from their SFAs, compile and presumably do basic error checking on them, and pass the compiled listings on to the State CACFP agencies. It is estimated that the average NSLP State agency burden associated with this work will be 2.5 hours.

Comparison of Costs and Benefits

The analysis presented here finds that the DCH tiering structure established by P.L. 104–193 and promulgated by this interim rule will accomplish its objective of targeting Federal child care benefits to low-income children. This targeting will save a projected $2.2 billion in Federal tax revenues over the next 6 years (fiscal years 1997–2002). Non-low-income providers (tier II DCHs providers) and non-low-income families with children in tier II DCHs will bear most of the costs resulting from the Federal government's $2.2 billion savings. Low-income families with children in tier II DCHs may also bear some costs, but States may offset this by opting to increase child care subsidies. The analysis further found that while targeting will place new administrative burdens on sponsors, State CACFP and NSLP agencies, and NSLP school food authorities, these burdens are relatively modest.

5. Requirements for Regulatory Analyses Established by Regulatory Flexibility Act

The Regulatory Flexibility Act (P.L. 96–354) establishes requirements for analyses of regulatory actions that are expected to have a significant economic impact on a substantial number of small entities. P.L. 96–354 was enacted at the urging of small businesses after repeated claims that uniform application of regulations regardless of business size was disproportionately damaging to small entities. It is expected that this rule will have an economically significant impact on tier II DCH providers due to the large decrease in reimbursement rates for meals served in those DCHs. This rule will also affect sponsoring organizations, considered to be ''small organizations'' by P.L. 96–354, although the economic impact on them is expected to be minimal. The specific effects for sponsors and tier II providers were discussed under the Costs to Providers and Costs to Sponsors sections of the Cost/Benefit Assessment.

The Act also requires that analyses estimate the type of professional skills necessary to reporting or record keeping requirements. The new reporting and record keeping required by this rule require no skills beyond those necessary for current program reporting and record keeping requirements.

Another P.L. 96–354 requirement is that analyses describe the steps taken by the promulgating agency (Food and Consumer Service, FCS) to minimize the economic impact on small entities. Specifically, the ''analysis shall also contain a description of any significant alternatives to the interim rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.'' There are no significant alternatives available to FCS that both (1) accomplish the stated objectives of P.L. 104–193 AND (2) minimize any significant economic impact on small entities.

The interim rule implements, in accordance with statute and with the statutory intent to target benefits, the programmatic changes mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193). The rule's only economically significant impacts are the decreased meal reimbursements for meals served in tier II DCHs; FCS cannot mitigate this effect other than by making targeting less accurate, which would be contrary to the spirit of P.L. 104–193. The only other class of small entities affected by this regulatory action are sponsors. The analysis finds that the costs that sponsors will incur in meeting the new program requirements established by this interim rule will be less than one percent of the payments each sponsor receives from USDA for operating the CACFP in its DCHs. The small size of this burden implies that this interim rule's economic impact on sponsors is minimal and that in the few areas where FCS had discretion, it made choices free from deleterious economic effects for sponsors. For example, FCS considered several alternatives for how often sponsors using simplified meal counting systems must re-determine the claiming percentage or blended reimbursement rate for each of their mixed DCHs using the income-status of currently enrolled children. P.L. 104–193 required that these re-determinations be made at least annually. FCS considered annual, semi-annual, and quarterly re-determinations and chose, for the interim rule, to require semi-annual re-determinations, having decided semi-annual represents the best compromise between effective targeting of benefits and limiting sponsor burden. The interim rule places no reporting requirements on homes or sponsors beyond those mandated by P.L. 104–193.

FCS is soliciting comments on the less-economically significant, burden related provisions of this rule and will consider all received comments when crafting the final rule and when revising the burden estimates for the final economic impact analysis.

6. References

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Approved:

This analysis is consistent with the possibility that a limited number of non-low-income children will be in tier I DCHs, and that a similar limited number of low-income children will be in non-mixed tier II DCHs.

Dated: December 5, 1996.

William E. Ludwig,

Administrator, Food and Consumer Services.

Dated: December 20, 1996.

Stephen B. Dewhurst,

Director, Office of Budget and Program Analysis.

Dated: December 20, 1996.

Keith Collins,

Chief Economist.

Dated: December 23, 1996.

Dan Dager,

Acting Executive Assistant to the Under Secretary for Food, Nutrition, and Consumer Services.

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Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV–96–929–2FR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the reporting requirements currently prescribed under the cranberry marketing order. The marketing order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (committee). This rule allows the committee to collect receipt and inventory information from handlers on a different species of cranberries. This rule will provide more accurate information to the cranberry industry to be used in making marketing decisions.

EFFECTIVE DATE: This final rule becomes effective February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kathleen M. Finn, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 720–1509, Fax #(202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax #(202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 929 (7 CFR part 929), as amended, regulating the handling of cranberries grown in 10 States, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,400 producers of cranberries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of cranberries may be classified as small entities.

Handlers are already required to complete a form four times a year reporting all regulated cranberries on hand for a specified period, all cranberries acquired and sold, and the new balance of cranberries on hand. This rule authorizes adding data to this form requiring information on a new variety of cranberries not regulated under the order. The form has an estimated burden time of two hours. No additional burden time will be added to this form to acquire this information. In addition, because the industry relies on the comprehensive information provided by the committee, it is critical that the committee obtain accurate information. This information will be used in making marketing decisions and the additional burden on handlers, if any, will not be significant.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule changes the reporting requirements currently prescribed under the cranberry marketing order. This rule allows the committee to collect receipt and inventory information from handlers on a different species of cranberries. This rule will provide more accurate information to the cranberry industry to be used in making marketing decisions. The committee unanimously recommended the above change.

The request for this information will be incorporated on the handler inventory report, a form already used by the committee. The request of this information should not constitute a significant burden on a business unit, large or small. Currently, the estimated reporting burden per response for the handler inventory report is two hours. The burden time will not change with the additional data request.

Section 929.62(e) of the cranberry marketing order provides authority to require handlers to furnish to the committee information with respect to acquisitions and dispositions of cranberries. This section also provides authority to require handlers to file reports to the committee as to the quantity of cranberries handled by such handler during any designated period.