

Rules and Regulations

Federal Register

Vol. 63, No. 38

Thursday, February 26, 1998

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DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Chapter II and Part 226

RIN 0584-AC20

Child Nutrition and WIC Reauthorization Act Amendments

AGENCY: Food and Consumer Service, USDA.

ACTION: Interim rule, with request for comments.

SUMMARY: This rule incorporates changes to the Child and Adult Care Food Program (CACFP) required by the Child Nutrition and WIC Reauthorization Act of 1989 and the Healthy Meals for Healthy Americans Act of 1994 by: providing administrative funds to family day care home sponsors for expansion into low-income or rural areas; granting federally funded income-eligible Head Start participants automatic eligibility for free CACFP meals without further application or eligibility determination; and allowing the use of administrative funds to assist unlicensed day care homes in becoming licensed. These revisions are intended to encourage Program participation in low-income and rural areas and to reduce the level of administrative and paperwork burden for Federal, State and local Program administrators and for Program participants. In addition, this rule amends 7 CFR chapter II to reflect the renaming of the Food and Consumer Service as the Food and Nutrition Service.

DATES: This rule is effective April 27, 1998 with the exception of the amendments to the heading of 7 CFR chapter II and to the references in the chapter, which are effective November 25, 1997. To be assured of consideration, comments must be postmarked on or before August 25, 1998.

ADDRESSES: Comments should be addressed to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 1006, Alexandria, Virginia 22302. All written submissions will be available for public inspection at this location, Monday through Friday, 8:30 a.m. to 5:00 p.m.

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or in the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives that achieves the objectives of the rule.

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

Executive Order 12372

The Child and Adult Care Food Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related notice (published at 48 FR

29115, June 24, 1983) CACFP is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Shirley R. Watkins, Under Secretary, Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. Even though Head Start agencies will benefit from the reduction of paperwork for those participants who qualify for automatic free meal eligibility, these benefits will not have a significant economic impact. The Department of Agriculture does not anticipate any adverse fiscal impact which would result from implementation of this rulemaking.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless it is 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 CACFP, the administrative procedures are set forth under the following regulations: (1) Institution appeal procedures in 7 CFR 226.6(k), and (2) Disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR 226.22 and 7 CFR Part 3015.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), this notice invites the general public and other public agencies to comment on the information collection.

Written comments must be received on or before April 27, 1998.

Comments concerning the information collection aspects of this interim rule should be sent to the Office

of Information and Regulatory Affairs, OMB, Room 3208, New Executive Building, Washington, D.C. 20503, Attention: Wendy Taylor, Desk Officer for the Food and Nutrition Service. A copy of these comments may also be sent to Mr. Eadie at the address listed in the ADDRESSES section of this preamble. Commenters are asked to separate their information collection requirements from their comments on the remainder of the interim rule.

OMB is required to make a decision concerning the collection of information contained in this interim regulation between 30 to 60 days after the publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the interim regulation.

Comments are invited on: (a) Whether the 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 collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: 7 CFR Part 226, Child and Adult Care Food Program.
OMB Number: 0584-0055.

Expiration Date: July 31, 2000.

Type of Request: Revision of existing collection.

Abstract: The rule, Child Nutrition and WIC Reauthorization Act Amendments, implements the provision included in Pub. L. 103-448, the Healthy Meals for Healthy Americans Act of 1994, that allows a Federally funded income eligible Head Start participant to be eligible for free meals under CACFP without further application. In addition, the rule also implements the provision included in Pub. L. 101-147, the Child Nutrition and WIC Reauthorization Act of 1989, that makes additional administrative funds available to family day care home sponsors to reach children located in low-income or rural areas. In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to provide comments on the information collection requirements of the interim rule as noted below:

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
7 CFR 226.12(b), Day care home sponsors submit application and enter into agreement for expansion funds:				
Existing	0	0	0	0
Proposed	388	1	2.5	970
7 CFR 226.12(b), State agency approval of expansion funds requests:				
Existing	0	0	0	0
Proposed	54	7	1.5	567
7 CFR 226.23(e), All households except for those with income eligible Head Start participants:				
Existing	687,562	1	.05	34,378
Proposed	336,304	1	.075	25,223

Estimated Total Annual Burden on Respondents:

Total Existing Burden Hours 34,378
Total Proposed Burden Hours 26,760
Total Difference -7,618

Public Participation

In accordance with the requirements of 5 U.S.C. 553, the Under Secretary for Food, Nutrition, and Consumer Services has determined that good cause exists for not requiring notice and comment before making this rule effective. In Section 708(k)(3)(A) of Pub. L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Congress directed the Secretary of Agriculture to issue as interim regulations by January 1, 1997 those provisions of this rulemaking applicable to expansion funds and the use of administrative funds to assist day care home licensing. Therefore, notice and public comment before the regulations

in this rulemaking on those matters are implemented is impracticable. The Under Secretary for Food, Nutrition, and Consumer Services has also determined that the remaining provisions of this rulemaking may also be implemented without prior notice and comment. Those provisions related to Head Start participant eligibility for CACFP are nondiscretionary. Thus, prior notice and comment are unnecessary as it would serve no practical purpose. As specified above, the Department will consider comments on all regulations implemented by this rulemaking and will address those comments in future rulemakings.

Background

On November 10, 1989, the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101-147) made a number of changes to the Child Care Food Program by amending Section 17

of the National School Lunch Act (NSLA) (42 U.S.C. 1766). In addition to changing the name of the Program to the Child and Adult Care Food Program (CACFP) in Section 105(a), Pub. L. 101-147 contained provisions which: (1) simplified the free and reduced price application process, (2) established a 1/3 daily Recommended Dietary Allowance (RDA) nutritional requirement for lunches served in adult day care centers, (3) made additional administrative funds available to family day care home sponsors to reach children located in low-income or rural areas, (4) permitted State agencies to allow every-other-year applications by institutions, (5) allowed State governors to designate a separate State agency to administer the adult portion of the CACFP, (6) changed the basis for

making commodities available to State agencies, and (7) made two miscellaneous technical changes.

In response to the above-referenced legislative provisions, the Department published a final rule on January 16, 1990 at 55 FR 1376 which changed the name of the Program from the Child Care Food Program to the Child and Adult Care Food Program and a final rule on July 14, 1993 at 58 FR 37847 on a meal pattern to be used in adult day care centers. The adult meal pattern rule contained the requirement found in section 105(b)(3)(A) of Pub. L. 101-147 that lunches served in adult day care centers provide approximately one-third of the Recommended Dietary Allowances established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences to participating individuals. Finally, the Department has issued a final rule which implemented those provisions of Pub. L. 101-147 related to the content and processing of free and reduced price applications (61 FR 25550, May 22, 1996) and an interim Child Nutrition and WIC Reauthorization Act of 1989 and Other Amendments Rule concerning provisions 5, 6, and 7 above (62 FR 23613, May 1, 1997). The expansion funds provision contained in Pub. L. 101-147 is included in this interim regulation, while the provision regarding two-year applications is discussed below.

On October 6, 1994, the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448) amended section 17 of the NSLA. Pub. L. 103-448 included provisions which: (1) allow a Federally-funded income eligible Head Start child to be considered automatically eligible for free CACFP meals without further application or eligibility determination; (2) allow the use of administrative funds to assist unlicensed day care homes in becoming licensed; and (3) permit State agencies to allow three-year applications from institutions.

The preamble to this interim rulemaking provides an in-depth discussion of the first two provisions. The third, which amended the provision from Pub. L. 101-147 permitting State agencies to take two-year applications from institutions, will be proposed in a future regulation which is designed to streamline current Program requirements, where feasible, for State and local Program administrators.

1. Expansion Funds for Low-Income or Rural Areas

Section 105(b)(1)(A) of Pub. L. 101-147 amended section 17(f)(3)(C) of the

NSLA (42 U.S.C. 1766(f)(3)(C)) to provide for additional administrative payments to day care home sponsoring organizations wishing to expand into low-income or rural areas. This amendment was made to the NSLA because of evidence demonstrating that low-income and rural areas are generally underserved by family and group day care homes participating in the CACFP and that sponsoring organizations may encounter higher-than-normal costs when expanding into those areas. Current section 226.12(b) of the Program regulations contains a reference to the availability of start-up payments to develop or *expand* Program operations in day care homes. In the past, these funds have been employed to extend the Program without specific regard for income or geographic considerations. "Expansion funds," as that term is used in section 105(b)(1)(A) of Pub. L. 101-147, are only to be available for extending the Program into low-income or rural areas presently unserved or underserved by the Program. Given the broad similarity between the intended use of expansion funds provided for by Pub. L. 101-147 and start-up payments presently provided by the Department to stimulate Program growth, the Department has been guided extensively by its experience with start-up payments in developing the interim implementation of expansion payments discussed below.

Accordingly, this interim rulemaking amends section 226.2 to add a new definition of "expansion payments" which limits the availability of these funds to expanding the Program to day care homes located in low-income or rural areas and amends the existing definitions of the terms "administrative costs" and "start up payments" for consistency.

Basic Eligibility

Under section 226.12(b) of existing CACFP regulations, four types of organizations are eligible for start-up funds to develop or expand day care operations. They are: (1) prospective sponsoring organizations of day care homes; (2) participating sponsoring organizations of child care centers or outside-school-hours care centers which intend to sponsor day care homes; (3) independent centers which intend to sponsor day care homes; and (4) participating day care home sponsoring organizations with fewer than 50 homes. These four categories were established in regulations issued by the Department on January 22, 1980 (45 FR 4960, 4966).

The Department believes that expansion funds should be made

available only to currently participating sponsoring organizations of family day care homes. Because of their experience with Program requirements these organizations will be best suited to efficiently and effectively expand the Program. Sponsors eligible for start-up funds would have access to expansion funds once they became active family day care home sponsoring organizations if they wish to expand into low-income or rural areas.

Accordingly, this interim rulemaking amends section 226.12(b) to limit the availability of expansion funds to participating sponsoring organizations of family day care homes.

Time Restrictions

Section 105(b)(1)(F) of Pub. L. 101-147 amended section 17(f)(3)(C) of the NSLA (42 U.S.C. 1766 (f)(3)(C)) to provide that "[i]nstitutions that have received start-up funds may also apply at a later date for expansion funds." In order to implement this provision in an orderly manner, the Department believes that it is appropriate to require some minimum amount of time to elapse between the receipt and expenditure of start-up funds and the receipt of expansion funds. While sponsors may add homes on a regular basis without start-up funds, the relatively large number of homes brought into a sponsorship as a result of receiving start-up funds will make significant demands on a sponsor's resources. Sponsoring organizations which have just begun Program operations or have expanded their operations with start-up funds need adequate time to adjust to their new responsibilities. We believe that a full year's experience with its new homes should be adequate to accomplish this.

Accordingly, this interim rulemaking amends section 226.12(b) by prohibiting a sponsoring organization which has received start-up funds from applying for expansion funds until 12 months after it has satisfied all its obligations under its start-up agreement with the State agency.

Payment Limitations

Section 226.12(d) of current regulations limits the number of homes on which the *start-up* funds calculation is based to 50 homes or, for existing sponsors of homes, 50 minus the number of homes already operated by the sponsor. Consistent with this start-up limitation, we are limiting to 50 the number of homes on which expansion funds calculations are based. Unlike the start-up funds limitation, this 50-home limit does not include homes already operated by the sponsoring organization

requesting the funds. We are extending the 50-home limitation to expansion funds because we believe that payments in that amount give sponsoring organizations a significant level of funding with which to expand into low-income or rural areas, as well as an amount which provides support for a manageable level of expansion.

Section 17(f)(3)(C) of the NSLA (42 U.S.C. 1766(f)(3)(C)), as amended by section 105(b)(1) of Pub. L. 101-147, limits the amount of expansion funds that may be paid to a sponsoring organization to "not less than the institution's anticipated reimbursement for administrative expenses under the program for one month and not more than the institution's anticipated reimbursement for administrative expenses under the program for two months."

The current maximum per-home administrative reimbursement rate for the first 50 homes is \$75 (62 FR 37702, July 14, 1997). Therefore, using these rates, sponsoring organizations applying for expansion funds are eligible for an amount not less than: one month times the number of expansion homes (up to 50) times \$75 per home; and not more than two months times 50 homes times \$75 per home (i.e., \$7,500). As with start-up funds, the amount of expansion funds ultimately received by a sponsoring organization may not exceed the amount actually expended by it. Also, the State agency must consider the anticipated amount of expansion funding to be paid and alternate sources of funds available to the sponsoring organization for such purposes when evaluating the sponsor's plans for expansion. Finally, the Department wishes to emphasize that State agencies should carefully review a sponsoring organization's expansion plans to ensure that the activities described in the plan support the amount requested.

Accordingly, this interim rulemaking amends section 226.12(b) by establishing limits on expansion funds to not less than one and not more than two months of administrative payments for up to 50 homes at the maximum current per home/per month payment.

The Department anticipates that most sponsoring organizations will be approved for expansion payments only once. However, if a sponsoring organization has satisfactorily expanded into the area(s) for which expansion fund applications were originally made, it may apply for a second round of expansion payments for expansion into other low-income and rural areas. This application must justify the need for further expansion and must be approved by the State agency. A sponsoring

organization is not eligible to apply for a second round of expansion funds until at least 12 months after the sponsoring organization has satisfied all obligations under its initial or prior agreement.

Accordingly, this interim rulemaking amends section 226.12(b) to allow sponsoring organizations to receive expansion payments once, unless 12 months have elapsed and the sponsor reapplies and can justify the receipt of further funds for expansion into other areas.

Definitions of Low-Income or Rural Area

As discussed above, section 105(b)(1)(A) of Pub. L. 101-147 requires that expansion funds be used to help reach homes in low-income or rural areas. The statute is silent, however, with regard to how "low-income" and "rural" are to be defined. In the absence of any specific statutory direction, the Department has been guided in this interim rulemaking by the corresponding definitions established in 7 CFR part 225 for the Summer Food Service Program (SFSP) and, more recently, in the definition of tier I homes promulgated in section 17(f)(3)(A)(ii) of the NSLA as amended by section 708(e)(1) of Pub. L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and section 226.2 of the CACFP regulations.

The SFSP regulations (7 CFR 225.2) define *rural* as: "(a) any area in a county which is not a part of a Metropolitan Statistical Area or (b) any 'pocket' within a Metropolitan Statistical Area which, at the option of the State agency and with FCSRO concurrence, is determined to be geographically isolated from urban areas." This definition was promulgated in part 225 in response to a provision in section 13(b)(4) of the NSLA (42 U.S.C. 1761(b)(4)) which directed the Department to study the administrative costs associated with operating the SFSP and, thereafter, to establish administrative reimbursement rates which reflect the variable costs incurred by different types of sponsors. This study indicated that sponsors which prepare their own meals and those which operate in rural areas incur costs higher than those of other sponsors (44 FR 36365, January 2, 1979). Therefore, a higher reimbursement rate was established for sponsors meeting the aforementioned definition of "rural". Given the fact that expansion funds were provided under Pub. L. 101-147 in order to help defray the costs associated with moving into rural areas, and the fact that the definition of "rural" in part 225 has been

successfully used to distinguish between urban and rural sponsors in the SFSP for more than 15 years, the Department believes it appropriate to incorporate the same definition of "rural" for the CACFP. The Department periodically updates the list of Metropolitan Statistical Areas, as defined by the Census Bureau, and State administrators of the CACFP will be notified when future updates are made.

Accordingly, this interim rulemaking amends section 226.2 by adding a definition of "rural area" as described above to be used by State agencies when determining the eligibility of sponsoring organizations for expansion funds.

With regard to "low-income" areas, SFSP regulations reflect the definition found in section 13(a)(1)(C) of the NSLA (42 U.S.C. 1761(a)(1)(C)) for "areas in which poor economic conditions exist." The statute defines such areas as those "in which at least 50 percent of the children are eligible for free or reduced price school meals, as determined by information provided from departments of welfare, zoning commissions, census tracts, by the numbers of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the area of program food service sites, or from other appropriate sources * * *." Similarly, section 17(f)(3)(A)(ii) of the NSLA as amended by section 708(e)(1) of Pub. L. 104-193 defines low-income areas in which tier I homes are located as areas in which at least 50 percent of the children are eligible for free or reduced priced meals, as defined by elementary school or census data.

The Department sees considerable similarity between the intended application of these statutory definitions and their potential application for determining eligibility for expansion funds in the CACFP. Because the SFSP is intended to provide free meals to children in low-income areas, the statute defines ways in which local sponsors can document the socioeconomic status of areas, not households or individuals. Similarly, the statute governing CACFP intends to target Program benefits to low-income areas through an eligibility definition based primarily on geographic areas. The Department also believes that sponsoring organizations wishing to obtain expansion funds to move into low-income areas should only be expected to demonstrate the need of the area in broad terms. Using the precedent already set in SFSP and CACFP, the Department believes it appropriate and reasonable to apply similar criteria to the CACFP expansion funds provisions. Specifically, the Department will utilize

the area-based definition of low-income eligibility established in paragraphs (b) and (c) of the definition of "tier I day care home" in section 226.2, as promulgated in the recently published rule concerning the two-tier reimbursement system for family day care homes (62 FR 889, January 7, 1997).

The Department does *not* believe that it would be appropriate to permit sponsoring organizations to target individual day care home providers outside of low-income areas with expansion funding. The statutory language which makes expansion funds available speaks of using these funds to target providers in low-income or rural areas, not low-income providers located outside of such areas. Although the two-tier reimbursement system for day care homes does permit low-income providers outside of low-income areas to receive tier I rates, use of expansion funds to reach these providers will not necessarily promote the targeting of Program benefits to low-income children. For these reasons, this interim rule prohibits sponsors from using expansion funds to target individual day care homes that are not located in low-income areas; only homes in rural areas or in low-income areas, as defined in paragraphs (b) and (c) of the definition of tier I day care home in section 226.2, may be targeted for use of expansion funds.

Over time in the SFSP, it has been found that there are two primary sources of data that may be used to determine whether an area is one in which poor economic conditions exist—school data and census data. Of these, school data should always be consulted first since it is collected annually and is, therefore, generally more current and accurate than census data. Census data should be used when school data is unavailable or does not accurately represent the economic status of the area in question.

To establish an area's eligibility for expansion funding using school data, 50 percent or more of the children in the local area into which the sponsor wishes to expand must be eligible for free or reduced price school meals under the National School Lunch and School Breakfast Programs. In accordance with procedures established in the interim rule concerning the two-tier reimbursement system, sponsors will annually receive from their State agency a list of all elementary schools in the State in which at least 50 percent of the enrolled children are eligible for free or reduced price meals. As required by section 226.6(f)(9), the first such list will be available to sponsors no later than April 1, 1997, while subsequent

lists will be provided by February 15 of each year. In many cases, this information alone will enable sponsors to target their expansion efforts to the neighborhoods served by these elementary schools. The State agency would then determine whether the areas targeted for expansion by the sponsor were areas served by a school with 50 percent or greater free or reduced price enrollment.

As discussed above, experience with the SFSP has shown school data to be the best indicator of low-income areas. However, sponsors may also choose to document the area's eligibility for expansion by using census data. The Department expects that census data should be used only when school data is unavailable or does not accurately represent an area's economic status. Circumstances which might warrant the use of census data instead of school data include: (1) the area targeted for expansion is part of a rural area, where geographically large elementary school attendance areas may obscure localized pockets of poverty which can be identified through the use of census data; (2) school data show a target area to be close to the 50 percent threshold, and census data may reveal specific portions of the school's attendance area which meet the 50 percent criterion; or (3) mandatory bussing has affected the percentage of free or reduced price eligibles in neighborhood schools, and the school is unable to "factor out" the pupils bussed in from other areas and provide the sponsor with data on the percentage of free and reduced price eligibles in the area targeted for expansion. In any of these circumstances, use of census data may help a sponsor or State agency to more precisely ascertain a neighborhood's true current income poverty status.

State CACFP administering agencies which also administer the SFSP are aware that the Department recently contracted with the Bureau of the Census for a "special tabulation" (or computerized list) of the number and percentage of children eligible for free or reduced price meals in every census "block group" in America. Census block groups are sub-units of census tracts. Census tracts vary in size from 2,500 to 8,000 persons, with an average of approximately 4,000 persons per tract. Census block groups, on the other hand, are defined by housing units, numbering between 250 and 550 units, with an average of 400 units (or roughly 900 persons) per block group.

Because block groups generally include a relatively limited number of children, we believe that the information contained in the special

tabulation will be an excellent tool for determining whether a target area is eligible for expansion funding. This may be especially true in rural areas, where pockets of poverty may be harder to identify in school attendance areas and census tracts which are geographically much larger than in urban areas. In order to facilitate implementation of the two-tier reimbursement system, State agencies are already required at section 226.6(f)(9) to provide sponsors with relevant census data.

Accordingly, this interim rulemaking amends section 226.2 by adding a definition of "low-income area" which is based on paragraphs (b) and (c), definition of tier I day care home, in section 226.2.

2. Automatic Eligibility of Federally Funded Income Eligible Head Start Participants

Section 109(b) of Pub. L. 103-448 amended section 17(c)(5) of the NSLA (42 U.S.C. 1766 (c)(5)) to make children who are enrolled in the Head Start Program automatically eligible for free meal benefits in the CACFP without further application or eligibility determination on the basis of Head Start's low-income criteria. Specifically, amended section 17(c)(5) of the NSLA states that a child shall be considered automatically eligible for benefits under the CACFP without further application or eligibility determination, if the child is "enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 *et seq.*), on the basis of a determination that the child is a member of a family that meets the low-income criteria prescribed under section 645(a)(1)(A) of the Head Start Act (42 U.S.C. 9840(a)(1)(A))."

The Head Start Program, administered by the U.S. Department of Health and Human Services, is a national grant program providing comprehensive child development services to low-income children and their families. The number of children (slots) which the Head Start grantee is to serve, as indicated on the grant award, is termed the "funded enrollment." Although many States fund additional Head Start slots in order to expand program access, these slots are not part of the Head Start Program authorized under the Head Start Act. Therefore, children in such State-funded slots are not covered by the above-mentioned provision of Pub. L. 103-448 and are not automatically eligible for free meals in the CACFP.

Head Start Program regulations (45 CFR 1305.4) require that at least 90 percent of the children who are enrolled in each Head Start Program must be from low-income families. That means

up to 10 percent of the children enrolled may be from families that exceed the low-income guidelines. A low-income family is defined in 45 CFR 1305.2 as "a family whose total annual income before taxes is equal to, or less than, the income guidelines. For the purposes of eligibility, a child from a family that is receiving public assistance or a child in foster care is eligible even if the family income exceeds the income guidelines." The term "income guidelines," also defined in 45 CFR 1305.2, means 100 percent of the Federal poverty guidelines, which are adjusted for family size and to reflect annual changes in the Consumer Price Index.

During the initial enrollment, applicant families must submit an application which provides income information. For income-eligible applicants, a Head Start employee signs a statement identifying the documents examined and stating that the child is income eligible to participate in the Program. If a child has been found income eligible and is participating in a Head Start Program, he or she remains income eligible through that enrollment year and the immediately succeeding enrollment year. Generally, each child enrolled in a Head Start program must be allowed to remain in Head Start until the child has entered kindergarten or first grade. However, 45 CFR 1305.7 does allow a Head Start Program to choose not to enroll a child where there are compelling reasons for the child not to remain in Head Start, such as when there is a change in the child's family income and there is a child with a greater need for Head Start services.

The statutory language implementing this provision in the CACFP sets forth two conditions regarding automatic eligibility for free meals for Head Start participants. First, the child must be enrolled as a participant in the Head Start Program under the Head Start Act (i.e., the children must be in a Federally-funded slot as part of Head Start's "funded enrollment"). Under Head Start Program regulations (45 CFR 1305.2), "enrollment" means the official acceptance of a family by a Head Start Program and the completion of all procedures necessary for a child and family to begin receiving services.

Second, the child must be determined to be a member of a family that meets the low-income criteria prescribed under the Head Start Act. Such a determination is made by the Head Start grantee based on the low-income criteria specified in 45 CFR 1305.2 of the Head Start Program regulations (i.e., the household must be at or below 100 percent of the Federal poverty guidelines or must be eligible due to

receipt of public assistance or foster care). Children who participate in Head Start but who are not determined to be income eligible, or children who participate in a State-funded Head Start program, must submit a free and reduced price application and be determined eligible in order to receive free or reduced price CACFP meals.

In order to minimize the paperwork burden associated with the automatic eligibility process, the Department has decided that the Head Start statement of income eligibility completed upon initial enrollment in the Head Start Program constitutes sufficient documentation of automatic eligibility for free CACFP meals for the period of time the child is enrolled as an income-eligible Head Start participant. If this documentation is readily available to the official(s) designated by the institution to determine eligibility for free CACFP meals, no further action is necessary.

In those cases where the statement is not readily available, (e.g., "wrap around" programs where the food service and the Head Start Program are administered by separate entities), the CACFP determining official must obtain documentation of the Head Start participants' income eligibility in order to confer automatic eligibility for free meals. Such documentation may simply consist of a list of the children's names and a statement certifying that those children are currently enrolled as participants in the Head Start Program based on a determination that they are from families that meet the low-income criteria prescribed under the Head Start Act. The documentation must also include the date and the signature of a Head Start employee authorized to provide the certification on behalf of the Head Start office. At the beginning of each year, the CACFP determining official must establish whether each child meets or continues to meet the conditions for automatic eligibility. Finally, the Head Start statement of income eligibility or, if applicable, the list of eligibles, are subject to the same record retention requirements as other CACFP records.

Accordingly, this interim rulemaking amends section 226.2 by adding a new definition of "Head Start participant" and revising the definitions of "documentation," "free meal," and "verification" to grant Federally-funded income eligible Head Start participants automatic eligibility for free CACFP meals without further application or eligibility determination. To reflect the addition of these new definitions, this rulemaking also amends relevant parts of sections 226.23(d) and 226.23(e)(1).

3. Administrative Funds for Licensing

As previously discussed in this preamble, section 105(b)(1) of Pub. L. 101-147 amended section 17(f)(3)(C) of the NSLA (42 U.S.C. 1766(f)(3)(C)) by providing expansion funds to family or group day care home sponsoring organizations to reimburse such institutions for administrative expenses related to expansion into low-income or rural areas. Section 116(c) of Pub. L. 103-448 further amended section 17(f)(3)(C) of the NSLA by allowing funds for administrative expenses to be used by family or group day care home sponsoring organizations "to conduct outreach and recruitment to unlicensed family or group day care homes so that the day care homes may become licensed." (Note: Pub. L. 104-193 clarified the intent of this provision by deleting the words "outreach and recruitment", but left intact the authority for sponsors to use administrative funds to assist family day care homes in becoming licensed.) This amendment to the NSLA was designed to ensure that family and group day care homes desiring to participate in the CACFP are not denied access to the Program strictly because they lack the funds to comply with licensing standards.

In the past, the Department has always viewed outreach and recruitment expenses as allowable administrative costs for the sponsoring organization; however, the costs of meeting licensing standards or of obtaining a license were viewed as an expense to the day care home. Section 17(f)(3)(C) now allows sponsoring organizations to use administrative, start-up, or expansion funds to assist family and group day care providers who cannot get licensed simply because they lack the funding to comply with licensing standards. For example, a sponsoring organization may wish to assist family day care homes which cannot be licensed or approved because they lack the funds to purchase smoke detectors. As with all proposed administrative costs, under this new provision, the sponsoring organization may request, in its administrative budget, line item approval for the cost of the smoke detectors or other items necessary for licensing, thereby assisting day care homes in becoming licensed and eligible to participate in the CACFP. Further guidance on this subject will be provided in an upcoming revision to FNS Instruction 796-2, "Financial Management—Child and Adult Care Food Program."

Because Pub. L. 103-448 does not mandate that administrative funds be

limited to use by sponsoring organizations of family and group day care homes that are physically located in low-income or rural areas, regular administrative or start-up funds may be used for licensing-related expenses, regardless of where the home is located. However, section 17(f)(3)(C)(i) of the NSLA specifically limits the use of expansion funds to administrative expenses in support of homes located in low-income or rural areas. This would include the use of expansion funds for licensing-related expenses. The Department wants to stress that this amendment to the NSLA does not increase the sponsor's potential maximum total reimbursement levels; rather it authorizes a new allowable expense category for the use of administrative funds (i.e., regular administrative, start-up, and expansion funds).

Although the law does not specifically mandate that administrative fund requests for licensing-related expenses be limited to use by family and group day care homes that are physically located in low-income or rural areas, the Department believes that the law intended for these funds to be made available only to those providers who are financially in need. Therefore, we are requiring that providers applying to participate in the CACFP also complete a free and reduced price meal application when requesting administrative funds to cover license-related expenses in order to verify their eligibility for free or reduced price meals.

Requiring that providers meet the income eligibility requirements for free and reduced price meals will ensure that public funds are targeted to providers most in need of financial assistance in meeting licensing standards and are not provided to individuals who have the financial means to comply with licensing requirements on their own. In addition, it will add very little burden for providers or sponsors, since providers must already demonstrate free or reduced price eligibility in order to receive reimbursement for meals served to their own children.

The law itself places no dollar limit on the amount of administrative funds which may be spent on license-related expenses. However, the Department believes that it would be prudent to set a cap, or ceiling, on such expenses. Given the lack of assurance that a home-based provider will remain in the child care business for a given length of time, the Department is establishing a \$300 total limit per home on license-related

expenses so that payments can be controlled.

Examples of administrative expenses that the Department feels are reasonable under this provision and which could readily be purchased for less than \$300, might include: (1) small items/equipment such as smoke detectors, fire extinguishers, etc.; (2) licensing fees and related expenses such as fingerprinting costs, the cost of health and fire inspections, etc.; or (3) minor repairs such as the installation of railings on a staircase to a basement where the day care operation is being conducted. The Department is particularly interested in receiving comments on whether this dollar limit (which is based on the Low-Income Family Day Care Home Demonstration Project Final Report, USDA, FNS, March 1993, which was designed to test various strategies intended to increase low-income day care home participation in the Program) will adequately protect against potential misuse of Federal funds. The sponsor must have documented receipts to support these administrative claims. Reimbursement may only be claimed for the actual cost incurred. In addition, consistent with normal Program practice, all claims under this provision must be submitted to the State agency for the fiscal year in which the expense is incurred.

This new provision does not require day care home providers receiving administrative funds from a sponsoring organization to stay with the CACFP for any given period of time after receiving the funds. However, CACFP sponsoring organizations will have some assurance that day care home providers requesting these funds will join CACFP and their sponsorship since providers will be required to complete both a Program application through their sponsorship, and a free or reduced price application before receiving any funding support. In addition, in order to deter unnecessary requests, day care home providers must provide to the sponsoring organization evidence of their application for licensing and official documentation of the defects that are impeding their licensing approval. These documents will be kept on file in the sponsors office for later review by State Program staff and need not accompany the sponsor's administrative budget or request for budget adjustment. Finally, the Department wishes to emphasize that these funds may only be used to assist a provider to comply with licensing requirements. They may not be used for general remodeling or renovation.

Accordingly, this interim rulemaking amends section 226.2 by revising the

definitions of "Administrative costs" and "Start-up payments", and by adding a second sentence to the new definition of "Expansion payments", to allow sponsoring organizations of family or group day care homes to use these funds for outreach and recruitment of unlicensed day care homes as specified above. This interim rulemaking also amends section 226.18(a) and adds a new section 226.16(k) to establish requirements for day care homes requesting administrative funds to cover license-related expenses.

List of Subjects in 7 CFR Part 226

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

Accordingly, 7 CFR chapter II and part 226 are amended as follows:

Chapter II—Food and Nutrition Service, Department of Agriculture

1. The heading of 7 CFR chapter II is revised to read as set forth above.

Chapter II—[Amended]

2. In 7 CFR chapter II (consisting of parts 210 through 299) all references to "Food and Consumer Service" are revised to read "Food and Nutrition Service" and all references to "FCS" are revised to read "FNS".

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

3. 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).

4. In section 226.2:

a. New definitions of *Expansion payments*, *Head Start participant*, *Low-income area*, and *Rural area* are added in alphabetical order.

b. The definitions of *Administrative costs* and *Start-up payments* are amended by adding a new sentence to the end of each paragraph.

c. The definition of *Documentation* is amended by removing the period at the end of paragraph (d)(2), adding the word "or", and adding new paragraph (e).

d. The definition of *Free meal* is amended by revising the first sentence.

e. The definition of *Program payments* is amended by adding the words "expansion payments," between the words "payments," and "advance".

f. The definition of *Verification* is amended by revising all text after the third sentence.

The additions and revisions specified above read as follows:

§ 226.2 Definitions.

* * * * *

Administrative costs * * * These administrative costs may include administrative expenses associated with outreach and recruitment of unlicensed family or group day care homes and the allowable licensing-related expenses of such homes.

* * * * *

Documentation * * *

(e) For a child who is a Head Start participant, the Head Start statement of income eligibility issued upon initial enrollment in the Head Start Program or, if such statement is unavailable, other documentation from Head Start officials that the child's family meets the Head Start Program's low-income criteria.

* * * * *

Expansion payments means financial assistance made available to a sponsoring organization for its administrative expenses associated with expanding a food service program to day care homes located in low-income or rural areas. These expansion payments may include administrative expenses associated with outreach and recruitment of unlicensed family or group day care homes and the allowable licensing-related expenses of such homes.

* * * * *

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

* * * * *

Head Start participant means a child currently receiving assistance under a Federally-funded Head Start Program who is categorically eligible for free meals in the CACFP by virtue of meeting Head Start's low-income criteria.

* * * * *

Low-income area means a geographical area in which at least 50 percent of the children are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined in accordance with paragraphs (b) and (c), definition of tier I day care home.

* * * * *

Rural area means any geographical area in a county which is not a part of a Metropolitan Statistical Area or any "pocket" within a Metropolitan Statistical Area which, at the option of the State agency and with FNSRO concurrence, is determined to be geographically isolated from urban areas.

* * * * *

Start-up payments * * * These start-up payments may include administrative expenses associated with outreach and recruitment of unlicensed family or group day care homes and the allowable licensing-related expenses of such homes.

* * * * *

Verification * * * However, if a food stamp, FDPIR or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp or FDPIR household or AFDC assistance unit. If a Head Start statement of income eligibility is provided for a child, verification for such child shall include only confirmation that the child is a Head Start participant. For an adult participant, if a food stamp or FDPIR case number or SSI or Medicaid assistance identification number is provided, verification for such participant shall include only confirmation that the participant is included in a currently certified food stamp or FDPIR household or is a current SSI or Medicaid participant.

* * * * *

5. In section 226.4:

a. Paragraph (e) is amended by adding the words "and expansion" after the word "start-up" in the paragraph heading and each time it appears in the text.

b. Paragraph (f) is amended by adding the word ", expansion" between the words "start-up" and "and".

6. In section 226.6:

a. Paragraph (c)(3) is amended by adding the words "or expansion" between the words "start-up" and "payments".

b. Introductory text of (k) is amended by adding the words "or expansion" between the words "start-up" and "payments" in the first sentence.

7. In section 226.7:

a. Paragraph (h) is amended by adding the words "and expansion" after the word "start-up" in the paragraph heading and text.

b. Paragraph (j) is amended by adding the word ", expansion" between the words "start-up" and "and".

8. In section 226.12:

a. Paragraph (a) is amended by adding the heading "General." before the first sentence.

b. Paragraphs (b) through (e) are removed and a new paragraph (b) is added to read as follows:

§ 226.12 Administrative payments to sponsoring organizations for day care homes.

* * * * *

(b) Start-up and expansion payments.

(1) Prospective sponsoring organizations of day care homes, participating sponsoring organizations of child care centers or outside-school-hours care centers, independent centers, and participating sponsoring organizations of less than 50 homes which meet the criteria in paragraph (b)(2) of this section shall be entitled to receive start-up payments to develop or expand successful Program operations in day care homes. Participating sponsoring organizations of day care homes which meet the criteria in paragraph (b)(2) of this section shall be entitled to receive expansion payments to initiate or expand Program operations in day care homes in low-income or rural areas. The State agency shall approve start-up payments only once for any eligible sponsoring organization, but may approve expansion payments for any eligible sponsoring organization more than once, provided that: the request must be for expansion into an area(s) other than that specified in their initial or prior request; and 12 months has elapsed since the sponsoring organization has satisfied all obligations under its initial or prior expansion agreement. Eligible sponsoring organizations which have received start-up payments shall be eligible to apply for expansion payments at a date no earlier than 12 months after it has satisfied all its obligations under its start-up agreement with the State agency.

(2) Sponsoring organizations which apply for start-up or expansion payments shall evidence:

(i) Public or tax-exempt status, or moving toward compliance with the requirements for IRS tax-exempt status, in accordance with § 226.15(a);

(ii) An organizational history of managing funds and ongoing activities (i.e., administering public or private programs);

(iii) An acceptable and realistic plan for recruiting day care homes to participate in the Program (such as the method of contacting providers), which may be based on estimates of the number of day care homes to be recruited and information supporting their existence, and in the case of

sponsoring organizations applying for expansion payments, documentation that the day care homes to be recruited are located in low-income or rural areas; and

(iv) An acceptable preliminary sponsoring organization management plan including, but not limited to, plans for preoperational visits and training.

(3) The State agency shall deny start-up and expansion payments to applicant sponsoring organizations which fail to meet the criteria of paragraph (b)(2) of this section or which have not been financially responsible in the operation of other programs funded by Federal, State, or local governments. The State agency shall notify the sponsoring organization of the reasons for denial and allow the sponsoring organization full opportunity to submit evidence on appeal as provided for in § 226.6(k). Any sponsoring organization applying for start-up or expansion funds shall be notified of approval or disapproval by the State agency in writing within 30 calendar days of filing a complete and correct application. If a sponsoring organization submits an incomplete application, the State agency shall notify the sponsoring organization within 15 calendar days of receipt of the application and shall provide technical assistance, if necessary, to the sponsoring organization for the purpose of completing its application.

(4) Sponsoring organizations which apply for and meet the criteria for start-up or expansion payments shall enter into an agreement with the State agency. The agreement shall specify:

(i) Activities which the sponsoring organization will undertake to initiate or expand Program operations in day care homes;

(ii) The amount of start-up or expansion payments to be issued to the sponsoring organization, together with an administrative budget detailing the costs which the sponsoring organization shall incur, document, and claim;

(iii) The time allotted to the sponsoring organization for the initiation or expansion of Program operations in family day care homes;

(iv) The responsibility of the applicant sponsoring organization to repay, upon demand by the State agency, start-up or expansion payments not expended in accordance with the agreement.

(5) Upon execution of the agreement, the State agency shall issue a start-up or expansion payment to the sponsoring organization in an amount equal to not less than one, but not more than two month's anticipated administrative reimbursement to the sponsoring organization as determined by the State

agency. However, no sponsoring organization may receive start-up or expansion payments for more than 50 day care homes. Eligible sponsoring organizations with fewer than 50 homes under their jurisdiction at the time of application for start-up payments may receive such payments for up to 50 homes, less the number of homes under their jurisdiction. Eligible sponsoring organizations applying for expansion funds may receive at a maximum such payments for up to 50 homes at the currently assigned administrative payment for the first 50 homes. In determining the amount of start-up or expansion payments to be made to a sponsoring organization, the State agency shall consider the anticipated level of start-up or expansion costs to be incurred by the sponsoring organization and alternate sources of funds available to the sponsoring organization.

(6) Upon expiration of the time allotted to the sponsoring organization for initiating or expanding Program operations in day care homes, the State agency shall obtain and review documentation of activities performed and costs incurred by the sponsoring organization under the terms of the start-up or expansion agreement. If the sponsoring organization has not made every reasonable effort to carry out the activities specified in the agreement, the State agency shall demand repayment of all or part of the payment. The sponsoring organization may retain start-up or expansion payments for all day care homes which initiate Program operations. However, no sponsoring organization may retain any start-up or expansion payments in excess of its actual costs for the expenditures specified in the agreement.

9. In section 226.16, a new paragraph (k) is added to read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(k) Before sponsoring organizations expend administrative funds to assist family day care homes in becoming licensed, they shall obtain the following information from each such home: a completed free and reduced price application which documents that the provider meets the Program's income standards; evidence of its application for licensing and official documentation of the defects that are impeding its licensing approval; and a completed CACFP application. These funding requests are limited to \$300 per home and are only available to each home once.

10. In section 226.17, paragraph (b)(7)

at the end of the paragraph to read as follows:

§ 226.17 Child care center provisions.

* * * * *

(b) * * *

(7) * * * In addition, Head Start participants need only have a Head Start statement of income eligibility, or a statement of Head Start enrollment from an authorized Head Start representative, to be eligible for free meal benefits under the CACFP.

* * * * *

11. In section 226.18, the introductory text of paragraph (a) is revised to read as follows:

§ 226.18 Day care home provisions.

(a) Day care homes shall have current Federal, State or local licensing or approval to provide day care services to children. Day care homes which cannot obtain their license because they lack the funding to comply with licensing standards may request a total limit per home of \$300 in administrative funds from a sponsoring organization to assist them in obtaining their license. Day care homes that, at the option of their sponsoring organization, receive administrative funds for licensing-related expenses must complete documentation requested by their sponsor as described in § 226.16(k) prior to receiving any funds. Day care homes which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available, a day care home may participate in the Program if:

* * * * *

12. In Section 226.23:

a. Paragraph (d) is amended by revising the fifth sentence.

b. Paragraph (e)(1)(i) is amended by adding a new sentence to the end of the paragraph.

c. Paragraph (e)(1)(ii)(F) is amended by revising the first and fifth sentences.

The addition and revisions specified above read as follows:

§ 226.23 Free and reduced price meals.

* * * * *

(d) * * * The release issued by child care institutions shall also announce that children who are members of AFDC assistance units, food stamp or FDPIR households, or are Head Start participants are automatically eligible to receive free meal benefits. * * *

(e)(1) * * *

(i) * * * Furthermore, such forms and materials distributed by child care

institutions shall state that if a child is a Head Start participant, the child is automatically eligible to receive free Program meal benefits, subject to submission by Head Start officials of a Head Start statement of income eligibility or income eligibility documentation.

(ii) * * *

(F) A statement which includes substantially the following information: "Section 9 of the National School Lunch Act requires that, unless you provide a food stamp, FDPIR or AFDC case number for your child, or unless a Head Start statement of income eligibility or income eligibility verification is provided for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free or reduced price meals." * * * These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp, Indian tribal organization, welfare, or Head Start office to determine current certification for receipt of food stamps, FDPIR or AFDC benefits, or participation in Head Start, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to prove the amount of income received. * * *

* * * * *
Dated: February 13, 1998.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 98-4949 Filed 2-25-98; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-ANE-44-AD; Amendment 39-10326; AD 98-04-14]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney PW4164, PW4168, and PW4168A Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Pratt & Whitney PW4164,

PW4168, and PW4168A series turbofan engines. This action requires initial and repetitive inspections for loose or broken front pylon mount bolts, replacement, if necessary, with new bolts, and establishment of a new cyclic life limit. This amendment is prompted by new flight test data that indicate higher than predicted loads. The actions specified in this AD are intended to prevent front pylon mount bolt failure, which could result in engine separation from the aircraft.

DATES: Effective March 13, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-ANE-44-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565-6600, fax (860) 565-4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7130, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received data from flight testing of Pratt & Whitney PW4164 and PW4168 series turbofan engines installed on Airbus Industrie A330 series aircraft. The flight testing revealed higher than predicted loads for front pylon mount bolts, resulting in decreased service life. At this time, there are no U.S. operators of this aircraft/engine combination. This condition, if not corrected, could result in front pylon mount bolt failure, which could result in engine separation from the aircraft.

The FAA has reviewed and approved the technical contents of Pratt & Whitney Service Bulletin (SB) No. PW4G-100-A71-9, Revision 1, dated November 24, 1997, that describes procedures for initial and repetitive inspections for loose or broken front pylon mount bolts, replacement, if necessary, with new bolts, and removal of bolts from service upon reaching a prescribed service life limit.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent front pylon mount bolt failure. This AD requires initial and repetitive inspections for loose or broken front pylon mount bolts, replacement, if necessary, with new bolts, and establishment of a new cyclic life limit of 11,000 cycles in service (CIS). When parts accumulate 6,000 and 8,000 cycles since new (CSN), this AD requires different inspection procedures to be followed, but the manufacturer has informed the FAA that they are developing new material front pylon mount bolts that may be ready and certified for installation prior to any parts currently in service accumulating 6,000 CSN. When the new material parts are available, future rulemaking may be forthcoming that may constitute terminating action to the repetitive inspections required by this AD. The actions would be required to be accomplished in accordance with the SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD