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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 226

RIN 0584-AD66

#### For-Profit Center Participation in the Child and Adult Care Food Program

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts without change the interim rule, published on July 27, 2005, which added a provision to the Child and Adult Care Food Program (CACFP) regulations authorizing for-profit centers providing child care or outside-school-hours care to participate based on the income eligibility of 25 percent of children in care for free or reduced price meals. This provision, which has been available nationwide through annual appropriation acts since December 2000, was permanently established by the Child Nutrition and WIC Reauthorization Act of 2004. This rule permits the ongoing participation of for-profit centers in the CACFP based on the income eligibility of children in care for free or reduced price meals.

**DATES:** This final rule is effective November 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Keith Churchill or Minh Pham, Child Care and Summer Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305-2590.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### *Why Was the Interim Rule Published?*

An interim rule on the participation of for-profit centers in the CACFP was

published on July 27, 2005 (70 FR 43259). The interim rule was issued in response to Section 119(a) of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108-265), which amended section 17(a)(2)(B)(i) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1766(a)(2)(B)(i)) to permanently authorize for-profit centers that provide child care or outside-school-hours care to participate in the CACFP if 25 percent of the children in care are eligible for free or reduced price meals under the Program.

This criterion provides an additional means by which for-profit centers may qualify for Program participation. For-profit centers in all States have been permitted to participate in the Program since December 2000, when a provision of Public Law 106-554, added Section 17(a)(2)(B)(i) to the NSLA, 42 U.S.C. 1766(a)(2)(B)(i). That time-limited provision was subsequently renewed annually until made permanent by Public Law 108-265 on June 30, 2004. Prior to December 2000, the Food and Nutrition Service (FNS) implemented separate but similar authority in section 17(p) of the NSLA, 42 U.S.C. 1766(p), permitting for-profit centers in three States (Kentucky, Iowa, and Delaware) to participate in the Program. Section 119(a)(2) of Public Law 108-265 struck this provision. As a result of the permanent statutory provision affecting for-profit centers, these States were notified that the pilot projects were eliminated and their affected for-profit centers were incorporated into regular for-profit Program participation under section 17(a)(2)(B)(i).

This authority differs from that in section 17(a)(2)(B)(ii) (42 U.S.C. 1766(a)(2)(B)(ii)), which permits for-profit centers providing child care or outside-school-hours care to participate in the CACFP if they receive compensation from the State title XX funds and if at least 25 percent of the enrolled children or the licensed capacity (whichever is less) receive benefits under title XX of the Social Security Act. This criterion was established by Public Law 101-147, which reauthorized child nutrition programs in November 1989, and is located at section 17(a)(2)(B)(ii) of the NSLA.

This final rule adopts the definition of "For-profit center" in § 226.2, which

was added to the CACFP regulations by the interim rule. This definition describes the eligibility criteria pertaining to for-profit centers serving children and adults. All other changes, which were made by the interim rule and are adopted by this final rule, stem from this new definition of for-profit center. These changes consist primarily of name changes in which the new term "For-profit center" is substituted for "Proprietary title XIX center" or "Proprietary title XX center".

##### *What Comments Were Received on the Interim Rule?*

We did not receive any comments on the interim rule.

##### II. Procedural Matters

##### *Executive Order 12866*

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

##### *Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Roberto Salazar, Administrator for the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This final rule implements a statutory change that permanently authorizes for-profit centers to participate in the Child and Adult Care Food Program on the basis of income eligibility of 25 percent of children in care for free or reduced price meals. This provision has been available to for-profit centers as an eligibility criterion for participation in the Program since FY 2001. Since the provision is not new, the Food and Nutrition Service estimates that the permanent designation of this eligibility criterion will not substantially increase the number of for-profit centers that may apply to participate in the Program.

##### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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 Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of \$100 million or more in any one year. This rule is, therefore, 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 part 3015, Subpart V and related Notice published at 48 FR 29114, June 24, 1983, this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### *Executive Order 13132*

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

#### *Executive Order 12988*

The 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 so specified in the Dates paragraph of the rule. 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 Food Care Program, the administrative procedures are set forth at 7 CFR 226.6(k), which establishes appeal procedures and 7 CFR 226.22 and 7 CFR parts 3016 and 3019, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

#### *Civil Rights Impact Analysis*

FNS has reviewed this final rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that there is no negative effect on these groups. All data available to FNS indicate that protected individuals have the same opportunity to participate in the CACFP as non-protected individuals. Regulations at 7 CFR 226.6(f)(1) require that CACFP institutions agree to operate the Program in compliance with applicable Federal civil rights laws, including title VI of the Civil Rights Act of 1964, title IX of the Education amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR Part 15, 15a, and 15b). At 7 CFR 226.6(m)(1), State agencies are required to monitor CACFP institution compliance with these laws and regulations.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collections of information unless it displays a current valid OMB control number. The rule does not contain any information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

#### *E-Government Act Compliance*

FNS is committed to complying with the E-Government Act, to promote the use of the Internet and other

information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### **List of Subjects in 7 CFR Part 226**

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

#### **PART 226—CHILD AND ADULT CARE FOOD PROGRAM**

Accordingly, the interim rule amending 7 CFR part 226, which was published at 70 FR 43259 on July 27, 2005, is adopted as a final rule without change.

Dated: October 13, 2006.

**Roberto Salazar,**

*Administrator, Food and Nutrition Service.*

[FR Doc. E6-17640 Filed 10-20-06; 8:45 am]

**BILLING CODE 3410-30-P**

#### **DEPARTMENT OF HOMELAND SECURITY**

##### **Coast Guard**

##### **33 CFR Part 117**

[CGD01-06-051]

RIN 1625-AA09

##### **Drawbridge Operation Regulations; Saugus River, Lynn and Revere, MA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard has temporarily changed the drawbridge operation regulations that govern the operation of the General Edwards SR1A Bridge, mile 1.7, across the Saugus River, between Lynn and Revere, Massachusetts. This temporary final rule allows the bridge to remain in the closed position from November 1, 2006 through April 30, 2007. This action is necessary to facilitate structural maintenance at the bridge.

**DATES:** This rule is effective from November 1, 2006 through April 30, 2007.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01-06-051) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue,