

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****7 CFR Parts 210, 215, 220, 225, 226, and 235**

[FNS–2016–0040]

RIN 0584–AE08

**Child Nutrition Program Integrity**

**AGENCY:** Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** This action implements statutory requirements and policy improvements to strengthen administrative oversight and operational performance of the Child Nutrition Programs.

**DATES:**

*Effective date:* The provisions of this rulemaking are effective September 22, 2023.

*Compliance dates:* This rulemaking consists of multiple provisions. Compliance for each provision is referenced in the **SUPPLEMENTARY INFORMATION** section of this final rule and detailed in the section-by-section analysis.

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**I. Child Nutrition Program Integrity Proposed Rule****A. Background**

FNS cannot accomplish its mission to provide access to food, a healthful diet, and nutrition education in ways that inspire public confidence without a strong and sustained effort to ensure that integrity is always a priority in the administration of the Child Nutrition Programs. On March 29, 2016, FNS published a proposed rule, *Child Nutrition Program Integrity*, 81 FR 17564, <https://www.fns.usda.gov/cn/fr-032916>, to address criteria and procedures to strengthen administrative oversight and operational performance of the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), Summer Food Service Program (SFSP), Child and Adult Care Food Program (CACFP), and State Administrative Expense Funds (SAE).

Many of the modifications proposed by FNS were based on amendments to the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1751 *et seq.*, <https://www.fns.usda.gov/nsla-amended-pl-117-328>, mandated by the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296, <https://www.fns.usda.gov/pl-111-296>, including:

- Implementation of fines;
- Prohibition of participation of any terminated entity or terminated

individual in any Child Nutrition Program;

- Termination and disqualification of SFSP sponsors and unaffiliated CACFP centers through extension of the serious deficiency process;
- Termination of permanent agreements of SFSP sponsors and CACFP institutions and facilities;
- More frequent reviews of CACFP institutions that are at risk of having serious management problems;
- State agency liability for payments when hearings for CACFP institutions are delayed; and
- Additional State agency funding for audits of CACFP institutions.

These provisions were added to the NSLA to strengthen the administration of Child Nutrition Programs, at all levels, through enhanced oversight and enforcement tools. They were designed to help FNS and State administering agencies reduce program error of all types, resulting in more efficient operations and improved compliance with program requirements.

The proposed rule also incorporated recommendations from the USDA Office of Inspector General (OIG), including management decisions from audits—*National School Lunch Program—Food Service Management Company Contracts*, published January 2013, <https://usdaoig.oversight.gov/reports/audit/national-school-lunch-program-food-service-management-company-contracts>, and *Review of Management Controls for the Child and Adult Care Food Program*, published November 2011—and FNS management evaluations of State agency administration of NSLP, SBP, SFSP, and CACFP. The recommendations address improvements to contract management, adherence to Federal procurement standards, and financial oversight to further enhance program integrity.

This final rule adds strong integrity safeguards to a variety of aspects of the Child Nutrition Programs. The provisions codified in this rulemaking are designed to increase program operators' accountability and operational efficiency, while improving the ability of FNS and State agencies to address severe or repeated violations of program requirements. This rulemaking also provides States and program operators with targeted flexibilities which allow oversight efforts to be tailored to specific program circumstances. These provisions will be effective on September 22, 2023. However, each provision has a separate compliance date for implementation, which is explained in the section-by-section analysis. Although the proposed rule required implementation for most

provisions 90 days after publication of the final rule, numerous respondents requested a 1-year delay in implementation, and FNS agrees that additional time is needed to implement this rulemaking. The extended implementation period gives State agencies time to make necessary systems changes, and gives FNS time to provide technical assistance and develop resources to support successful implementation.

FNS intends each of the provisions of this rule to be severable. Were a court to stay or invalidate any provision of this rule, or to hold a provision unlawful as applied in certain factual circumstances, FNS would intend that all other provisions set forth in this rule remain in effect to the maximum possible extent.

#### B. Public Comments

FNS received 5,659 comments from a cross section of stakeholders during a 90-day comment period, which was extended to July 7, 2016. Of these, 3,261 responses were from 11 form letter campaigns, 2,266 responses were unique, and an additional 108 were unique responses that contained particularly substantive comments on specific aspects of FNS' proposed implementation of the statutory and discretionary requirements. The letter campaigns were organized primarily by the Freedom Works Foundation (2,652), the Food Research and Action Center (377), and the National CACFP Sponsors Association (147). Many of the comments expressed general opposition to Federal oversight policies, citing issues of government overreach. FNS is not responding to those comments, because they did not provide feedback on provisions that were specifically proposed for revisions as part of this rulemaking. Moreover, many of the requirements addressed in the proposed rule are based on statutory provisions in the NSLA and, therefore, cannot be removed through the rulemaking process.

Responses were generated from State administering agencies (21) and a wide variety of child nutrition program stakeholders, including those who identified as parents and private citizens (5,472), school food authorities (37), advocates (34), schools and educational institutions (9), community and faith-based organizations (7), food service management companies (7), health and child care professional associations (6), food banks (4), and students (2). Only 15 respondents unconditionally favored the proposed rule. Respondents expressed wide support for implementing robust

integrity practices and valuable suggestions for improvement. However, the vast majority of respondents (4,769) expressed general opposition to the penalties that FNS proposed. Of the remaining 875 comments, 687 were mixed and 188 were either out of scope (164) or duplicative (24). The comments (5,599) are posted at <http://www.regulations.gov> under docket ID FNS-2016-0040, *Child Nutrition Program Integrity*.

#### C. Section-by-Section Discussion of the Regulatory Provisions

##### 1. Fines for Violating Program Requirements

Section 22(e)(1)(A) of the NSLA, 42 U.S.C. 1769c(e), requires the Secretary to establish criteria by which a State agency or the Secretary may impose a fine against any school food authority (SFA) or school administering a Child Nutrition Program. Section 22(e)(2)(A) requires the Secretary to establish criteria by which the Secretary may impose a fine against any State agency administering a Child Nutrition Program. In both cases, the statute states that a fine may be imposed if it is determined that the SFA, school, or State agency has:

- Failed to correct severe mismanagement of the program;
- Disregarded a program requirement of which the SFA, school, or State has been informed; or
- Failed to correct repeated program violations.

Current regulations require State agency and FNS oversight to ensure program compliance, improve management, and promote integrity. The regulations at 7 CFR 210.26 provide FNS the authority to penalize individuals or entities for criminal violations, such as theft or fraud. However, existing regulations do not include a strong enforcement mechanism to protect Federal funds and maintain program integrity when an exceptional, non-criminal circumstance arises.

FNS proposed a process to implement the statutory authority to establish fines, referred to as "assessments" in the proposed rule. FNS expected assessments to serve as a new accountability measure to address severe or repeated program violations that seriously threaten the integrity of Child Nutrition Programs, but do not meet the threshold for criminal action. The proposed rule:

- Identifies violations that warrant assessments, as specified in statute;
- Allows FNS to establish assessments against State agencies and

to direct State agencies to establish assessments against SFAs, sponsors, or institutions;

- Allows State agencies to establish assessments against SFAs, schools, sponsors, or institutions;
- Identifies the calculations used to determine the first, second, and subsequent assessments;
- Requires assessments to be paid from non-Federal funds;
- Requires the State agency to notify FNS at least 30 days prior to establishing an assessment;
- Provides the ability to appeal any assessment through existing processes;
- Provides FNS and State agencies the authority to suspend or terminate for cause the participation of an entity, if the established assessment is not paid; and
- Requires implementation one school year after the publication of the final rule.

#### Public Comments

Of the comments that discussed assessments or fines, 6 were supportive, 3,955 were opposed, and 23 were mixed. Of the 3,955 responses in opposition, 3,132 were form letters. Many were opposed to the idea of government fines in general, citing issues of government overreach.

Proponents noted this provision would give State agencies an additional mechanism to address program violations and strengthen accountability. One stated that fines would be a useful compliance tool in exceptional situations and supported extending this provision to all Child Nutrition Programs.

Opponents argued that fines are unnecessary and punitive, and voiced concern that the risk of fines would discourage Child Nutrition Program operators from seeking technical assistance. They cited the potential for inconsistent application of fines across States, and expressed concern about bribery, collusion, and abuse. Opponents also disputed FNS authority to establish fines against non-school operators, and suggested State agencies have adequate accountability tools in SFSP and CACFP.

#### FNS Response

As required by statute, this final rule codifies the criteria and procedures that FNS has developed for State agencies to use to establish fines for program violations. Although the proposed rule used the term "assessment," FNS has opted to use the term "fine" in this final rule for clarity and for consistency with statute. A fine is commonly known to be a monetary penalty for a prohibited act.

This change responds to concerns that terms used in the proposed rule created confusion. Consistent with the statute and the proposed rule, the criteria that warrant fines include:

- Failure to correct severe program mismanagement;
- Disregard of a program requirement of which an SFA or State agency has been informed; or
- Failure to correct repeated violations of program requirements.

FNS stresses that fines will be applied under exceptional, not routine, circumstances. For example, fines may be warranted to address a serious violation, such as the intentional destruction of records or the intentional misappropriation of program funds. Fines would not be warranted for routine problems, such as a menu planning or meal pattern violation or a recordkeeping or resource management error, which can be corrected with State agency oversight and technical assistance.

A fine would never replace established technical assistance, corrective action, or fiscal action measures to solve commonplace or unintentional problems. Rather, the assessment of fines provides a new accountability tool for FNS and State agencies to use when there are severe or repeated non-criminal violations—the types of programs abuses that seriously threaten the integrity of Federal funds or significantly impair the delivery of service to eligible students. Each situation is different, and FNS and State agencies, in consultation with their legal counsel, will carefully consider whether a fine is the appropriate response.

As required by statute, this final rule allows fines to be established against SFAs and State agencies in the operation of any Child Nutrition Program, including the issuance of fines against SFA sponsors in SFSP and SFA institutions in CACFP. This is a change from the proposed rule, which would have extended fines to all types of SFSP sponsors and CACFP institutions. FNS has decided to pursue a separate rulemaking to propose amendments to SFSP and CACFP regulations that would strengthen the serious deficiency processes to safeguard Federal funds and program integrity against mismanagement, abuse, and fraud.

This final rule allows State agencies to suspend or terminate the participation of an SFA, if the established fine is not paid, and provides the ability to appeal any fine through existing processes at 7 CFR 210.18(p), 225.13, 226.6(k), and 235.11(f). Fines must be paid using non-Federal funds, as required by statute,

which may include State revenue funds in excess of the 30 percent required match for NSLP, other State appropriated funds, and local contributions to support the programs. All fines, and any interest charged, must be remitted to FNS and then transmitted to the United States Treasury. These funds cannot be used by FNS.

This final rule clarifies FNS expectations regarding the calculation and timeframe for the payment of fines. As required by section 22(e)(1)(A) of the NSLA, 42 U.S.C. 1769c(e), this rulemaking adds new paragraphs to identify maximum thresholds for first, second, and subsequent fines at 7 CFR 210.26(b)(3), 215.15(b)(3), 220.18(b)(3), 225.18(k)(3), 226.25(j)(3), and 235.11(c)(2). For State agency fines, FNS will calculate the maximum thresholds using all SAE allocations made available to the State agency in the most recent fiscal year for which full year data is available. For SFA fines, the State agency will calculate the maximum thresholds using program meal reimbursements from the most recent fiscal year for which full year data (*i.e.*, closeout data) is available.

FNS and State agencies may calculate a fine below the maximum thresholds. For example, a State agency may target a fine only to certain school sites, or only to meal reimbursements earned by an SFA during a certain timeframe. Consistent with the proposed rule, State agencies must notify FNS at least 30 days prior to fining an SFA. FNS approval of the State agency's action is not required. States agencies have discretion to determine the due date for a fine, and may consult with FNS to determine an appropriate due date. FNS strongly recommends State agencies also consult with their legal counsel prior to fining an SFA.

FNS is mindful of respondents' concerns about the potential for fines to be established against State agencies for local program violations. This final rule clarifies that State agencies may only be fined for severe or repeated program violations at the State level, including lack of proper oversight, but not for singular, specific program violations that occur at the local level. This final rule maintains FNS authority to direct the State agency to establish a fine against an SFA.

In most cases, Child Nutrition Program operators work together to build a culture of compliance. State agencies and SFAs that follow fundamental program requirements, and those that work to resolve compliance issues, will not be impacted by this provision, as fines will only be levied in cases of severe or repeated program

violations. FNS expects fines to be imposed only after State agencies and SFAs have been informed of program violations—and provided opportunity to correct them—through existing processes, such as direct technical assistance, corrective action, or fiscal action.

For less severe violations, for single violations, and for unintentional violations, technical assistance, corrective action, and, if necessary, fiscal action will remain appropriate courses of action. However, when existing processes do not adequately address program violations, the assessment of a fine will support efforts to ensure State agencies and SFAs comply with program regulations and use Federal funds for their intended purposes. FNS recognizes the importance of preserving public trust in the Child Nutrition Programs by holding State agencies and SFAs accountable for severe or repeated violations. In those exceptional circumstances, fines will be an important tool to bring State agencies and SFAs into compliance with Federal regulations and protect the integrity of the Child Nutrition Programs.

Accordingly, this final rule amends 7 CFR 210.18(p) and 235.11(c) and adds new paragraphs to 210.26(b), 215.15(b), 220.18(b), 225.18(k), and 226.25(j) to provide authority to FNS and to State agencies to establish fines in cases of severe or repeated program violations. The compliance date is August 23, 2024.

## 2. Reciprocal Disqualification in All Child Nutrition Programs

Section 12(r) of the NSLA, 42 U.S.C. 1760(r), states that any school, institution, service institution, facility, or individual that is terminated from any Child Nutrition Program and that is on a list of institutions and individuals disqualified from participation in SFSP or CACFP may not be approved to participate in or administer any Child Nutrition Program. Current CACFP regulations include procedures for disqualification of institutions and day care homes. An institution or individual remains on the National disqualified list (NDL) until each serious deficiency is corrected, or until 7 years have passed.

In all cases, all debts owed must be repaid prior to removal from the NDL. State agencies are required to consult the NDL when reviewing any program application, and must deny the application if the institution, or any of its responsible principals, is on the NDL. Although the statute authorizes an NDL for SFSP, currently, CACFP is the only Child Nutrition Program with an NDL.

FNS proposed requiring State agencies to deny the application for any Child Nutrition Program if the applicant has been terminated for cause from any Child Nutrition Program or the applicant is on the NDL for CACFP or SFSP. This process is called “reciprocal disqualification.” The proposed rule:

- Applies reciprocal disqualification to all applicants in any Child Nutrition Program;
- Specifies that either termination for cause or placement on an NDL would be the basis for reciprocal disqualification;
- Identifies an entity as any school, SFA, institution, service institution, facility, sponsoring organization, site, child care institution, day care center, day care home, responsible principal, or responsible individual;
- Applies suspension or termination procedures when it is determined that an entity currently participating in a Child Nutrition Program is terminated for cause from another Child Nutrition Program;
- Requires each State agency to develop a process to share information about disqualified entities within the State with other agencies administering Child Nutrition Programs or the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), which must be approved by FNS;
- Maintains disqualification until deficiencies are corrected, or until 7 years have passed, so that an entity will remain ineligible until all debts owed under the program are repaid;
- Establishes that the decision to deny an application is final and not subject to further administrative or judicial review; and
- Requires implementation 90 days after the publication of the final rule.

#### Public Comments

FNS received 127 comments about reciprocal disqualification. Of these, 7 were supportive, 105 were opposed, and 15 were mixed. Proponents stated that this provision promotes integrity across all Child Nutrition Programs. They agreed that if an entity is disqualified from one Child Nutrition Program, it should not be permitted to participate in another. Some responses supported the proposal but requested more guidance for successful implementation. Opponents were primarily concerned about the impact this provision could have on SFSP and CACFP participation. They asserted that SFAs may be reluctant to sponsor SFSP or CACFP if it puts their NSLP participation at risk and suggested limiting this provision to entities that are terminated for cause and placed on an NDL.

#### FNS Response

This provision supports integrity when it is determined that an entity currently participating in a Child Nutrition Program is terminated for cause from another Child Nutrition Program and placed on an NDL, as required by statute. It aligns with FNS’ efforts to preserve public trust in the programs by preventing further abuse and severe mismanagement. However, before the reciprocal disqualification process may be applied to program regulations, FNS recognizes that additional attention needs to be given to the NDL before it is expanded to SFSP.

FNS intends to publish a separate rulemaking to propose improvements to the serious deficiency process that will also address the legal requirements for records maintained on individuals in the NDL, including independent verification and the opportunity to contest matches on the list. This separate rulemaking will allow FNS to address additional requirements, further consider respondents’ concerns about termination for cause and disqualification and provide an opportunity for the public to comment on the changes. FNS is committed to publishing new regulations. Accordingly, this final rule will not codify any regulatory amendments related to the reciprocal disqualification process at this time.

#### 3. Serious Deficiency Process and Disqualification in SFSP and CACFP

Section 13(q) of the NSLA, 42 U.S.C. 1761(q), requires the Secretary to establish procedures for the termination of SFSP sponsors for each State agency to follow. The procedures must include a fair hearing and prompt determination for any sponsor aggrieved by any action of the State agency that affects its participation or claim for reimbursement. The Secretary is also required to maintain a list of disqualified sponsors and individuals that will be available to State agencies to use in approving or renewing sponsor applications.

In order to implement section 13(q), along with the reciprocal disqualification requirement under section 12(r) of the NSLA, 42 U.S.C. 1760(r), the proposed rule included amendments expanding the serious deficiency process in CACFP and extending it to SFSP. This integrity-focused process has provided a systematic way for CACFP State agencies and sponsoring organizations to correct serious management problems, and when that effort fails,

protect the program through due process.

Current SFSP regulations include provisions addressing corrective action, termination, and appeals. The regulations under 7 CFR part 225:

- Specify criteria State agencies must consider when approving sites for participation;
- Provide authority for the State agency to terminate sponsor participation;
- List the types of program violations that would be grounds for application denial or termination;
- Require State agencies to terminate participation of sites or sponsors for failure to correct program violations within timeframes specified in a corrective action plan; and
- Establish procedures for sponsors to appeal adverse actions, including termination of a sponsor or site and denial of an application for participation.

However, SFSP current regulations do not provide authority to FNS or State agencies to disqualify sponsors.

Serious deficiency, termination, and disqualification procedures already exist for institutions, day care homes, responsible principals, and responsible individuals in CACFP under section 17(d)(5) of the NSLA, 42 U.S.C. 1766(d)(5), and codified in regulations at 7 CFR 226.6(c) and 226.16(l). These procedures provide seriously deficient institutions and facilities with the opportunity to correct the serious deficiency. They are intended to ensure that institutions and day care homes that had failed to take satisfactory corrective action, within the allotted period of time, have had their program agreement terminated, been disqualified, and placed on the NDL. FNS proposed applying these existing requirements to establish a serious deficiency process for sponsors and sites in SFSP and unaffiliated centers in CACFP, which is essential to fulfilling the intent of section 12(r) of the NSLA. The proposed rule includes amendments to:

- Establish a serious deficiency process for unaffiliated child care centers and unaffiliated adult day care centers in CACFP;
- Modify termination procedures and establish a serious deficiency process in SFSP;
- Establish an NDL for SFSP that FNS would maintain and make available to all State agencies;
- Require each SFSP State agency to establish a list of sponsors, responsible principals, and responsible individuals declared seriously deficient;

- Require each SFSP State agency to provide appeal procedures to sponsors, annually and upon request; and
- Specify the types of adverse actions that cannot be appealed in SFSP.

#### Public Comments

FNS received 236 comments addressing application of the serious deficiency process in SFSP—104 (including a form letter campaign) were supportive, 8 were opposed, and 124 were mixed. Several respondents requested additional definitions and clarification of the terms that are used to describe the serious deficiency process. Multiple respondents suggested alternatives that would extend the timeframe for corrective action, adapt the amount of time for corrective action to specific types of serious deficiencies, and allow State agencies to approve long-term corrective action plans. They also asked FNS to consider delaying implementation to allow time for updating automated systems.

Out of 532 comments regarding amendments to the serious deficiency process in CACFP, 11 were supportive, 47 (including 38 form letters) were in opposition, and 474 (including 462 form letters) were mixed. Many of the respondents voiced general concern about using the current CACFP serious deficiency process as a model for establishing procedures in other Child Nutrition Programs. They suggested that FNS further investigate and attempt to address potential inconsistencies in implementation among States.

#### FNS Response

FNS agrees that modifications are needed to improve the serious deficiency process to ensure its application is fair and fully implemented. Consequently, FNS published a notice, *Request for Information: The Serious Deficiency Process in the Child and Adult Care Food Program*, in the **Federal Register**, at 84 FR 22431, on May 17, 2019, <https://www.fns.usda.gov/cacfp/fr-051719>, to gather information to help FNS understand the firsthand experiences of State agencies and program operators. FNS received 580 comments in response to this request for information. An analysis of the responses has convinced FNS to delay the expansion of the serious deficiency process and related changes. To better serve State agencies and program operators, important modifications are needed to make the application of the serious deficiency process consistent and effective, in line with current statutory requirements.

To allow FNS to respond to the concerns and challenges that resonated in the public comments, FNS intends to publish a separate rulemaking to propose improvements to the serious deficiency process and provide an opportunity for the public to comment on the changes. FNS is committed to publishing new regulations to address a serious deficiency determination, corrective action, termination for cause, and disqualification, prior to extending these requirements to unaffiliated centers in CACFP and SFSP sponsors. This separate rulemaking will establish a serious deficiency process for SFSP, with provisions for disqualification and placement on the NDL. It will also address the legal requirements for records maintained on individuals on the NDL.

State agencies will continue to have discretion to apply their own processes for addressing seriously deficient performance by unaffiliated centers in CACFP and sponsors in SFSP, during this period of rulemaking development. Implementation of State agency processes does not require a State agency request for FNS approval of additional requirements. FNS will continue to provide technical assistance as needed to support such implementation.

To eliminate ambiguity, this rulemaking also includes a definition of “Termination for convenience” to clarify that an agreement may be terminated for convenience when a sponsor, institution, facility, or State agency chooses to permanently end program participation, due to considerations unrelated to its performance of program responsibilities. If an entity decides to apply to participate in SFSP or CACFP, at a future date, a new agreement is required. However, if the service of meals is temporarily interrupted, due to considerations unrelated to program performance, the State agency or sponsoring organization, as applicable, must be notified in writing that meals will not be claimed for that period of time. The agreement remains in effect.

Termination for convenience, particularly by the State agency, may be an infrequent occurrence. The regulations maintain that the State agency, sponsor, institution, or facility cannot terminate for convenience to avoid implementing the serious deficiency process. Any entity that voluntarily terminates its agreement after receiving a notice of intent to terminate will be terminated for cause and disqualified.

Accordingly, this final rule amends 7 CFR 225.2, 225.6(i), 226.2, and

226.6(b)(4) to define “Termination for convenience” and address the cessation of program activities in SFSP and CACFP for reasons that are unrelated to performance. The compliance date is August 23, 2024. FNS will propose additional State agency provisions for establishing a serious deficiency process to address termination for cause, disqualification, and other administrative actions for program violations in a separate rulemaking.

#### 4. State Agency Review Requirements in CACFP

Monitoring is an essential tool for ensuring integrity and reducing program abuse. Section 17(d)(2)(C) of the NSLA, 42 U.S.C. 1766(d)(2)(C), directs the Secretary to develop policies under which each State agency must conduct at least one scheduled site visit, at not less than 3-year intervals, to identify and prevent management deficiencies, fraud, and abuse, and to improve CACFP operations. The statute mandates more frequent reviews of any institution that:

- Sponsors a significant share of the facilities participating in CACFP;
- Conducts activities other than those expressly related to the administration and delivery of CACFP;
- Has had prior reviews that detected serious management problems;
- Is at risk of serious management problems; or
- Meets other criteria as defined by the Secretary.

Current regulations require State agencies to annually review at least a third (33.3 percent) of all institutions participating in the CACFP in each State. Independent centers must be reviewed at least once every 3 years. Sponsoring organizations with up to 100 facilities must also be reviewed at least once every 3 years. Sponsoring organizations with more than 100 facilities must be reviewed at least once every 2 years. New sponsoring organizations with five or more facilities must be reviewed within the first 90 days of operation.

As part of each required review of a sponsoring organization, the State agency must select a sample of facilities. For sponsoring organizations of less than 100 facilities, the State agency must review 10 percent of the facilities. For sponsoring organizations of more than 100 facilities, the State agency must review 5 percent of the first 1,000 facilities, and 2.5 percent of the facilities in excess of 1,000.

Consistent with the statutory mandate under section 17(d)(2)(C) of the NSLA, FNS proposed criteria for State agencies to use in selecting institutions for more

frequent reviews. Under the proposed rule, selected institutions must be reviewed at least once every 2 years. FNS did not propose any changes to the requirements for reviews of sponsored facilities.

#### Public Comments

FNS received 137 comments, of which 4 responses were supportive, 10 were opposed, and 123 were mixed. A large form letter campaign requested FNS to provide additional criteria to describe institutions that are at risk of having serious management problems. Multiple State agencies did not agree that conducting activities other than those related to CACFP would increase the risk of abuse, citing the participation of numerous types of child care, social service, tribal, and other multi-purpose organizations that engage in activities outside of CACFP. They observed that virtually all sponsoring organizations conduct activities other than those related to CACFP and that there is greater risk for abuse by institutions that have little outside funding and rely almost exclusively on CACFP funds. They also asked FNS to clarify how State agencies should incorporate additional reviews into the current 3-year review cycle.

Respondents expressed concern that compliance with the proposed rule would require additional State agency funding and staffing to address the substantial increase in burden. They recommended alternatives, such as requiring in depth financial reviews of all institutions; applying this requirement only to sponsoring organizations that do not provide child or adult care services, beyond CACFP; or excluding institutions that receive monitoring through their participation in other Federal programs, such as SFAs in NSLP.

FNS requested specific comments addressing the frequency and number of reviews State agencies would be required to perform under the provisions of the proposed rule. Four State agencies responded. They projected that 26 to 64 percent of sponsoring organizations would require additional reviews. They voiced concern that the additional audit funds now available to State agencies would not sufficiently cover the increased costs of monitoring.

#### FNS Response

This final rule establishes additional priorities and criteria for State agencies to use in selecting institutions for review. As required by statute, it requires State agencies to conduct at

least one review every 2 years of institutions that:

- Sponsor more than 100 facilities, as currently required;
- Engage in any activities other than those related to CACFP;
- Have received findings from a recent review that detected serious management problems; or
- Are at risk of having serious management problems.

In developing this rulemaking, FNS recognizes that a more frequent schedule of reviews will require State agencies to also prioritize funding and staffing resources. Comments from State agencies and other respondents stress this point. However, FNS has found that some States are not making full use of SAE and CACFP audit funds that are available to support the performance of reviews, audits, and other oversight activities. That is why FNS continues to encourage all State agencies to make wider use of these funds. Full use of these funds will help ease any potential burden.

SAE and CACFP audit funds are available to State agencies for specific purposes. SAE supports allowable expenses associated with the administration of the Child Nutrition Programs and related Food Distribution Programs; the employment of additional personnel to supervise, improve management, and give technical assistance to institutions; and other allowable uses described under 7 CFR 235.6. When some State agencies cannot fully use their allotment of SAE funds, FNS reallocates them to other States that can ensure they are used.

CACFP audit funds may be used to pay for the CACFP portion of institution audits and for conducting program-specific audits of institutions. The State agency may use these funds to support CACFP-related audits and subsequent audit resolution activities. The funds may also be used for reviews of CACFP institutions, provided that all required program-specific audits have been performed. The State agency may choose to retain all of its allocation, provide some of its audit funds to institutions, or use any remaining audit funds for other monitoring activities purposes. Section I-C-6 of this preamble provides additional information about the allocation and usage of audit funds for State agencies.

The comments also point out concerns about the criteria State agencies must use in selecting institutions for review. As required by statute, institutions must receive more frequent monitoring if they sponsor more than 100 facilities, engage in any activities other than those related to

CACFP, have had serious management problems, or are at risk of having serious management problems. These criteria are specified under section 17(d)(2)(C) of the NSLA. They underscore the importance of prioritizing State monitoring resources to achieve the most effective program oversight.

FNS characterizes serious management problems as the types of administrative weaknesses that affect an institution's ability to meet CACFP performance standards—financial viability, administrative capability, and accountability. A sponsoring organization that operates a variety of community programs may be prone to serious management problems if it has inadequate staffing to support CACFP operations or may be devoting too small of a share of administrative resources to CACFP. Routine allocation of a disproportional amount of a sponsoring organization's budget to its other activities should raise a red flag about its ability to properly manage CACFP. More frequent monitoring by the State agency would help improve CACFP operations by identifying and addressing these weaknesses. Excluding Head Start centers, SFAs, and other types of institutions that receive monitoring through their participation in other Federal programs from this requirement would be inconsistent with the statutory requirement and would not support efforts to identify and correct serious management problems in CACFP.

FNS expects State agencies to prioritize reviews to ensure that institutions do not divert CACFP resources to other activities. However, FNS is open to considering alternative approaches for determining review priorities, identifying institutions with a high number of risk factors, and ensuring effective monitoring on a case-by-case basis. State agencies should work with FNS to determine how they can design their monitoring policies to comply with statutory requirements. A State agency with a proposed alternative approach should consult with FNS.

The proposed rule cites examples of factors that may expose an institution's risk, including changes in ownership, significant staff turnover, new licensing status, complaints about a sponsoring organization, sizable differences in the number of claims or the amount of claims submitted by an institution, or large increases in the number of sponsored centers or day care homes. The State agency should also consider its ongoing evaluation of the performance standards that demonstrate the institution's ability to effectively operate the program. For example,

institutions that have lost other sources of funding are at risk, as they may be incapable of meeting their financial obligations if there were an interruption in CACFP payments.

Accordingly, as required by statute, this final rule amends 7 CFR 226.6(m)(6) to require the State agency to schedule reviews at least once every 2 years of institutions that sponsor more than 100 facilities, engage in activities other than CACFP, have had serious management problems in previous reviews, or are at risk of having serious management problems. The compliance date is August 23, 2024.

#### 5. State Liability for Payments to Aggrieved Child Care Institutions

Section 17(e) of the NSLA, 42 U.S.C. 1766(e), directs the Secretary to promulgate CACFP regulations to ensure that State agencies use a fair and timely hearing process to reduce the amount of time between a State agency's action and the child care institution's hearing. This provision only applies to payments to child care institutions. It shifts the responsibility for payments from aggrieved child care institutions to State agencies and works as a deterrent to prevent State agencies from failing to issue administrative review decisions within the required timeframe. It requires State agencies to pay, from non-Federal sources, all valid claims for reimbursement, from the end of the regulatory deadline for providing the hearing to the date a decision is made.

Under current regulations at 7 CFR 226.6(k), the State agency must acknowledge an institution's request for an administrative review within 10 days of its receipt of the request. Within 60 days of the State agency's receipt of the request, the administrative review official must inform the State agency, the institution's executive director, chair of the board of directors, responsible principals, and responsible individuals of the administrative review's outcome. During this period, all valid claims for reimbursement must be paid to the institution and the facilities of the institution, unless there is an allegation of fraud or a serious health or safety violation against the institution. The claims are paid from Federal funds.

FNS proposed amending the regulations to establish the State agency's liability to pay all valid claims if the State agency fails to meet the required timeframe for providing a fair hearing and a prompt decision. A State agency that fails to issue administrative review decisions within 60 days must pay, from non-Federal sources, all valid claims for reimbursement to the

aggrieved institution, beginning on the 61st day and ending on the date on which the decision is made.

#### Public Comments

FNS asked respondents to the proposed rule to address the financial implications of this provision, and suggest appropriate milestones that FNS could require of State agencies during implementation. FNS specifically requested comments to consider alternatives to the 60-day timeframe and any modifications which would meet State needs, without compromising integrity or the demand for a timely decision for the aggrieved institution. Out of 132 comments, 10 responses were supportive, 10 responses (including 2 form letters) were opposed, and 112 responses (including 99 form letters) were mixed.

Although the comments did not highlight any financial impacts, multiple respondents offered alternatives or improvements to the 60-day timeframe. They cited numerous factors outside of the State agency's control that may delay the State agency's ability to issue administrative review decisions within a 60-day deadline, including:

- Delays caused by the hearing official's schedule;
- Voluminous stacks of paperwork requiring the hearing official to take additional time for review;
- Additional time needed by the hearing official to render and fully document the legal basis for the decision;
- Continuances requested by the State agency to gather evidence; and
- The aggrieved institutions' needs for additional time to secure counsel, build their cases, or schedule hearings.

Thirteen of the comments were from State agencies administering CACFP that are directly responsible for adhering to the timeframe for issuing an administrative review decision under 7 CFR 226.6(k)(5)(ix). One State agency proposed changing the deadline for completion of the administrative review to 90 days, citing the results of Targeted Management Evaluations. During Fiscal Years 2010 and 2011, FNS conducted in-depth reviews of compliance with serious deficiency requirements and found that more than half of State agencies in the Targeted Management Evaluation sample needed up to 90 days to complete the administrative review process. Another State agency proposed changing the deadline to 120 days, which would conform with NSLP appeal procedures for SFAs under 7 CFR 210.18(p).

A form letter campaign proposed extending the appeals timeline from 60 to 90 days and extending the timeframe from 60 to 120 days before the State agency is responsible for paying valid claims from non-Federal sources. The respondents asked FNS not to hold the State agency accountable for delays due to an institution's actions or, alternatively, they asked FNS to allow an exemption from liability when the delays are outside the State agency's control. They also requested that FNS include a step in the process that would elevate appeals of State agency review findings for FNS mediation, as recommended in the August 2015 Report to Congress, *Reducing Paperwork in the Child and Adult Care Food Program*, [https://fns.usda.gov/sites/default/files/cacfp/CACFP\\_Paperwork\\_Report.pdf](https://fns.usda.gov/sites/default/files/cacfp/CACFP_Paperwork_Report.pdf).

#### FNS Response

Consistent with statute, this final rule requires State agencies to provide fair and timely hearings through the serious deficiency process. It also requires a State agency to pay all valid claims for reimbursement, from non-Federal sources, if the 60-day timeframe for the fair hearing is not met. Historically, some CACFP operators have come under scrutiny for a lack of program integrity in affording due process and ensuring payment accuracy, resulting in the need for the current regulatory framework featuring tighter regulations and deadlines. In order to minimize the exposure of program funds to waste or abuse, State agencies must be able to resolve problems quickly and train hearing officials to meet the FNS deadline to promptly complete the appeals process.

In developing this rulemaking, FNS recognizes the concerns of State agencies and other respondents about exceptional circumstances that may require additional time and flexibility. They argued that, despite all reasonable efforts to keep administrative processes moving quickly and to overcome administrative law procedures that challenge the CACFP timelines, delays may arise from any number of exceptional circumstances. In response to these comments, this final rule allows FNS to approve, on a case-by-case basis, a written request for an exception to the 60-day deadline.

FNS is committed to working with individual State agencies to establish milestones to implement this provision and minimize potential financial burdens. Suppose a State agency is unable to meet the deadline due to an isolated administrative issue at the State level. The State agency may seek a



reduction in its liability, a reconsideration of its liability, or an exception to the 60-day deadline in this specific case by submitting a request to FNS that includes information regarding any mitigating circumstances. In this example, the State agency would explain the specific administrative issue it is facing, why the issue prevents the State agency from meeting the deadline, and how the issue will be remedied to ensure that it does not continue in the future. To determine if the request should be approved, FNS would review the State agency's information and consider the mitigating circumstances. For approval, FNS would also have to weigh factors, such as how many times the State agency has failed to meet the deadline, or how much of a risk to the integrity of Federal funds would the delay or inaction by the State agency cause.

Accordingly, as required by statute, this final rule amends 7 CFR 226.6(k) to establish State liability for payments to aggrieved child care institutions. It requires the State agency to pay all valid claims with non-Federal funds if the State agency fails to meet the required timeframe for providing a fair hearing and a prompt determination, unless FNS grants an exception. To further support the State agency's ability to ensure timely resolution of administrative reviews, FNS intends to provide technical assistance materials on developing processes for tracking and notifying State agencies when they would become liable for payments and best practices for working with hearing officials to emphasize the importance of adhering to a timeline in rendering their decisions. The compliance date is August 23, 2024.

## 6. CACFP Audit Funding

Program audits are an integral component of CACFP, allowing State agencies to monitor funding and operations to ensure that sponsoring organizations and centers operate CACFP as required by law. Section 17(i)(2)(B) of the NSLA, 42 U.S.C. 1766(i)(2)(B), allows additional funding to State agencies to conduct audits. The Secretary may increase the amount of funds to any State agency that demonstrates that it can effectively use the funds to improve program management, under criteria established by the Secretary.

In previous fiscal years, each State agency has received up to 1.5 percent of the program funds used by the State during the second preceding fiscal year for the purpose of conducting CACFP audits. Beginning in Fiscal Year 2016, and each fiscal year thereafter, FNS

began accepting requests from State agencies to increase their audit funding from 1.5 percent to a maximum of 2 percent of the CACFP funds used by each State.

### Public Comments

Out of 381 comments, 10 were supportive and 371 (including 354 from 2 form letter campaigns) were mixed. The majority of responses supported increasing the amounts of audit funds available to State agencies, just not the need to have to apply for them. Multiple respondents requested greater flexibility to use audit funds to support integrity-related expenses, such as purchases of improved technology or travel for training purposes. They also recommended that FNS:

- Make it easier for State agencies to use additional audit funds to support the permanent or ongoing costs that are necessary for completing audits and maintaining program integrity;
- Ensure that State agencies can still pass through audit funds to institutions if they have audit funds available to do so; and
- Allow unspent audit funds to be used to improve CACFP, instead of returning them to the United States Treasury.

### FNS Response

This final rule allows FNS to increase the amount of State audit funds if a State agency demonstrates that it can effectively use the funds to improve program management. This rulemaking codifies into CACFP regulations the procedures FNS has established for State agencies to apply for a higher allocation of audit funds. It also provides criteria for FNS to approve these requests.

Additional CACFP audit funds are available to State agencies that demonstrate the need for an increase in resources to meet audit requirements under 7 CFR 226.8, fulfill monitoring requirements under 7 CFR 226.6(m), or effectively improve program management, under criteria established by the Secretary. FNS recognizes that the additional funds will be an incentive for State agencies to improve the effectiveness of their oversight activities and strengthen program integrity. FNS has established an equitable process, outlined below, to authorize these funds to those State agencies that submit a written request justifying the need for an increase in CACFP audit funds.

Prior to the beginning of each new fiscal year, FNS announces the opportunity to increase CACFP audit funding levels from 1.5 to 2 percent.

The announcement includes a spreadsheet calculating the State agency-by-State agency funding levels at the 1.5 and 2 percent levels to illustrate the maximum amounts available. Each State agency may request any amount within the 1.5 to 2 percent range of funds. Funding above 1.5 percent will be available only if the State agency can demonstrate it will effectively use the funds to improve program management.

This action does not change the formula used to calculate CACFP audit funds. It only changes the maximum amount of assistance available for some State agencies. The amount of assistance provided to a State agency for this purpose, in any fiscal year, may not exceed the State's expenditures for conducting audits as permitted under 7 CFR 226.4 and 226.8. CACFP audit funds are not reallocated and may not be carried over into another fiscal year. The funds must be used for:

- Funding of the CACFP portion of organization-wide audits and the resulting audit resolution activities;
- Conducting, handling, and processing CACFP-related audits and performing the resulting audit resolution activities; and
- Conducting monitoring of CACFP institutions, provided that all required program-specific audits have been performed.

FNS approval of requests for additional CACFP audit funds is based on the State agency's demonstrated need for additional funds to meet audit or monitoring requirements or effectively improve program management. To be funded, costs must be incurred strictly to meet the audit requirements under 7 CFR 226.8 and the monitoring requirements under 7 CFR 226.6(m). Allowable costs include, but are not limited to, salaries of auditors and monitors and travel expenses incurred to conduct audits and monitoring.

State agencies may use their allocation of CACFP audit funds to pay for the CACFP portion of institution audits or conduct program-specific audits of institutions, as specified under 7 CFR 226.8(b) and (c), respectively. The State agency may choose to retain all of its allocation, provide some of its audit funds to institutions, or use any remaining audit funds for other monitoring activities. For example, after the completion of program-specific audits, the State agency may use the remaining funds to cover costs incurred in evaluating financial viability, administrative capability, and accountability at the time of application. The review of budgets to ensure that costs are allowable and the purchase of mapping software for determining the



accuracy of area eligibility determinations for day care homes are also examples of allowable uses of remaining funds.

Accordingly, this final rule amends 7 CFR 226.4(j) to allow additional CACFP audit funds for State agencies. FNS now considers requests to increase audit funding from 1.5 percent to a cumulative maximum of 2 percent of CACFP funds used by the State agency during the second preceding fiscal year for the purpose of conducting program audits. The additional funds must be used to meet program oversight and audit requirements under 7 CFR 226.6(m) and 226.8, respectively, or to improve program management under criteria established by the Secretary. The compliance date is September 22, 2023.

#### 7. Financial Review of Sponsoring Organizations in CACFP

The proposed rule includes modifications in program policy resulting from the reports of findings from OIG's audit, *Review of Management Controls for the Child and Adult Care Food Program*, issued in November 2011, and FNS management evaluations of State agency administration of CACFP. These inquiries found that the misuse of funds was often an indicator of a sponsoring organization's systemic program abuse that State agency financial reviews were unable to detect. The reports recommended improvements that would be effective at uncovering and preventing the misuse of funds, including the following requirements for State agencies to review:

- CACFP bank account activity to verify that sponsoring organization transactions meet program requirements; and
- Program expenditures and the amount of meal reimbursement funds sponsoring organizations retain from unaffiliated centers for administrative costs.

Current regulations require State agencies to review and approve budgets for sponsoring organizations of centers to ensure that CACFP funds are used only for allowable expenses. The portion of the administrative costs to be charged to CACFP must not exceed 15 percent of the meal reimbursements estimated to be earned during the budget year unless a waiver is granted. All administrative costs, whether incurred by the sponsoring organization or by its sponsored centers, must be taken into account.

If a sponsoring organization intends to use any non-program resources to meet CACFP requirements, its budget must

identify a source of non-program funds that could be used to pay overclaims or other unallowable costs. To determine if CACFP funds are solely used for the operation or improvement of the nonprofit food service, an evaluation of the financial trail of source documents, ledgers, bank account statements, canceled checks, electronic deductions and transfers, and other financial records is required.

A thorough review of the sponsoring organization's financial records is vital in ensuring program integrity. The sponsoring organization must produce accurate, current, and complete disclosure of the financial results of each Federal award or program. Additionally, the records must identify the source and application of funds for federally-funded activities. However, the State agency's ability to monitor a sponsoring organization's use of CACFP funds is limited. While sponsoring organizations must submit annual budgets, which detail expenditures by cost category, they are not currently required to report actual expenses or fully account for their disbursement of CACFP funds.

To rectify these weaknesses, FNS proposed requiring State agencies to establish processes to verify that sponsoring organizations' financial transactions comply with CACFP regulations by requiring sponsoring organizations to report program expenditures. The proposed rule would require the State agency to annually review and compare at least 1 month of a sponsoring organization's bank account activity with documents to demonstrate that the transactions meet program requirements. The State agency must reconcile reported expenditures with CACFP payments to ensure that funds are accounted for fully.

The proposed rule would also require the State agency to annually review sponsoring organization reports of actual expenditures of program funds and the amount of meal reimbursement funds retained from their unaffiliated centers for administrative costs. If the State agency identifies any expenditures that have the appearance of violating program requirements, the State agency must refer the sponsoring organization's bank account activity to an auditor or other appropriate State authority for verification.

#### Public Comments

Out of 589 comments, 4 were supportive, 67 (including 53 form letters) were opposed, and 518 (including 486 from 3 form letter campaigns) were mixed. Many respondents argued that completing

annual financial reviews, particularly annual bank account reviews, would create an administrative burden for State agencies. Respondents were concerned that a review of a single month of bank account activity would not be an effective use of program resources. They asserted that bank account statements would not provide useful information because there is no requirement for sponsoring organizations to have separate bank accounts for Federal funds.

Multiple responses suggested that State agencies change review priorities to tie invoices to bank account statements in a targeted edit check of bank, invoice, and accounting records during the review process. The responses also included recommendations for adopting a risk-based approach to ensure that organizations at risk of misusing Federal funds are reviewed annually; coordinating the financial review with the review cycle; or adding a requirement that sponsoring organizations maintain timely financial reports onsite so that these reports would be available for review at any time.

#### FNS Response

This final rule requires State agencies to annually verify bank account activity and actual expenditures by sponsoring organizations in CACFP. The State agency must select and compare 1 month of a sponsoring organization's CACFP bank account activity with other documents that are adequate to support that the financial transactions meet program requirements. This rulemaking also requires State agencies to annually review CACFP expenditures reported by sponsoring organizations of unaffiliated centers. Sponsoring organizations must annually report the amount of program expenditures of program funds and the amount of meal reimbursement funds retained from their unaffiliated centers for administrative costs.

While comments to the proposed rule included a number of alternatives that may offer a small reduction in burden, FNS believes that an annual review of bank account activity will more effectively uncover and prevent the misuse of funds than a less frequent review cycle. The review of bank account activity provides the most reliable and effective means to verify and document costs. Unlike receipts that show the reviewer who is owed the payments, statements of bank account activity inform the reviewer of who actually received the payments.

Bank account statements and supporting documents are utilized as

tools to conduct edit checks on compliance requirements associated with the receipt and use of CACFP reimbursement. Edit checks can be conducted electronically and remotely, once the necessary supporting financial documentation is received by the State agency reviewer.

For example, to confirm that a sponsoring organization's invoices for CACFP expenses are legitimate and correctly paid, the State agency reviewer would compare the invoices to the actual bank statement. If discrepancies were found, the sponsoring organization would have the opportunity to present documentation to resolve them. The State agency reviewer would expand the review to examine additional months of bank statements, as warranted, to determine if the discrepancies are part of a systemic problem. If any expenditures have the appearance of violating program requirements, the State agency reviewer must attempt to verify the bank account activity. If the discrepancies cannot be verified, or if they are significant, the State agency reviewer must refer the sponsoring organization's bank account activity to appropriate State authorities, such as the State auditing division or the State Bureau of Investigation.

The State agency has discretion to obtain statements of bank account activity with the annual budget submission, as part of the application renewal, or through a monitoring review. No changes were made to the review content, application procedures, or budget approval requirements at 7 CFR 226.6. The review of bank account activity is easier if funds are not commingled. Although FNS does not require it in CACFP, maintaining a separate bank account for Child Nutrition Program funds is a recommended practice. Personal or non-Child Nutrition Program funds should be held in a separate bank account.

Accordingly, this final rule amends 7 CFR 226.7(b) to require the State agency to have procedures in place for annually reviewing at least 1 month of the sponsoring organization's bank account activity against other associated records to verify that the financial transactions meet program requirements. The State agency must also have procedures for annually reviewing a sponsoring organization's actual expenditures of CACFP funds and the amount of meal reimbursement funds retained from unaffiliated centers to support the sponsoring organization's administrative costs. The State agency must reconcile reported expenditures with program payments to ensure that funds are accounted for fully. This final

rule makes a corresponding change to 7 CFR 226.10(c) to require sponsoring organizations of unaffiliated centers to annually make available to the State agency the amount of program expenditures of program funds and the amount of meal reimbursement funds retained from their centers for administrative costs. FNS will work closely with State agencies to develop resources and provide technical assistance to sponsoring organizations to ensure successful implementation of these requirements. The compliance date is August 23, 2024.

#### 8. Informal Purchase Methods for CACFP

Informal purchase methods (*i.e.*, micro-purchases and small purchases) for procurements under Federal awards are covered in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, published by the Office of Management and Budget at 2 CFR part 200 and adopted by USDA at 2 CFR part 400. This guidance sets the dollar threshold and degree of informality that characterizes micro-purchases and small purchases.

Current practices allow CACFP institutions to use the micro-purchase method for transactions in which the aggregate cost of the items purchased does not exceed \$10,000, the current Federal threshold. Institutions may use the small purchase method for purchases below the Federal simplified acquisition threshold, currently set at \$250,000. States and local agencies may specify lower micro-purchase and simplified acquisition thresholds, and local agencies may set a higher micro-purchase thresholds in line with 2 CFR part 200.320(a)(1)(iv-v). FNS would like to note that when the Child Nutrition Program Integrity rule was initially proposed and open to public comment, the dollar amounts quoted for the micro-purchase threshold and the small purchase threshold aligned with the 2016-time frame. Due to the passage of time and inflationary adjustments the above-mentioned micro-purchase and small purchase thresholds align with the current federal thresholds.

CACFP regulations set out procedures that are intended to prevent fraud, waste, and program abuse in contracts and purchasing. However, operational provisions addressing food service management companies (FSMC) and procurement standards under 7 CFR 226.21 and 226.22, respectively, do not align with existing practices. Current regulations set the Federal threshold for small purchases at \$10,000. There is no mention of micro-purchases. FNS

proposed amending the regulations to expand the availability of informal purchase methods and align the applicable Federal dollar thresholds with future adjustments that may be made for inflation.

#### Public Comments and FNS Response

Of the comments addressing changes to informal purchase methods, three were supportive and one was mixed. One respondent requested that FNS define a range for informal purchases.

This final rule updates procurement standards and guidelines and makes the values of the Federal micro-purchase threshold and Federal simplified acquisition threshold consistent with current guidance on informal purchase methods under 2 CFR part 200. This modification eliminates the need to revise CACFP regulations each time the thresholds are adjusted for inflation.

This rulemaking also streamlines CACFP procurement standards and provides clarity by removing outdated or duplicative provisions of the regulations that have been replaced by 2 CFR part 200. For example, institutions must comply with procurement procedures for micro-purchases, small purchases, sealed bids, competitive proposals, and non-competitive proposals. The text at 7 CFR 226.22(i) is replaced with cross-references to the procedures at 2 CFR part 200 and USDA regulations under 2 CFR parts 400 and 415. This modification ensures that CACFP requirements are consistent with the streamlined regulations, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, that the Office of Management and Budget first published at 78 FR 78589, on December 26, 2013, <https://www.federalregister.gov/documents/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards>, and USDA-specific requirements published at 79 FR 75871, on December 19, 2014, <https://www.federalregister.gov/documents/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform>.

Micro-purchase and small purchase procedures are relatively simple and informal methods that are appropriate for the procurement of goods and services for which the cost is below Federal, State, and local thresholds. Micro-purchase procedures are used when the transaction is below the current Federal threshold of \$10,000 and prices are reasonable. Similarly, although State and local agencies may

impose more restrictive procurement procedures, adopting the Federal simplified acquisition threshold for small purchases—up to the threshold set by 2 CFR 200.88, *Simplified acquisition threshold*—would streamline the procurement process for CACFP institutions. The Federal simplified acquisition threshold is currently set at \$250,000. All procurement transactions, regardless of the amount, must be conducted in a manner that ensures free and open competition.

To the extent practicable, CACFP institutions must distribute micro-purchases equitably among qualified suppliers. When purchases are below the current Federal simplified acquisition threshold, an institution may use small purchase procedures, sealed bids, or competitive proposals, which require prices to be solicited and documented from an adequate number of qualified sources. Depending on the value of the purchase, many of the required contract provisions in Appendix II to 2 CFR part 200, *Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*, may apply.

Accordingly, this final rule amends 7 CFR 226.21(a) to remove outdated language so that the values of the Federal micro-purchase threshold and Federal simplified acquisition threshold are linked to 2 CFR part 200. This final rule also makes technical changes to remove outdated or duplicative provisions of 7 CFR 226.22 and affirm that procurements by public or private non-profit institutions comply with the appropriate requirements under 2 CFR part 200. The compliance date is August 23, 2024.

#### 9. School Food Authority Contracts With Food Service Management Companies

Any school food authority (SFA) may contract with an FSMC to manage the food service operation at one or more of its schools. SFAs are required to monitor contractor performance to ensure that FSMCs comply with the terms, conditions, and specifications of their contracts. As required by 2 CFR 200.403, all costs must be reasonable, necessary, and allocable. SFAs are currently permitted to use “fixed-price” and “cost-reimbursable” FSMC contracts:

- Under a fixed-price contract, the FSMC charges the SFA a fixed cost per meal or a fixed cost for a certain time period; and
- Under a cost-reimbursable contract, the FSMC charges the SFA for food service operating costs, and also charges

fixed fees for other services, such as labor.

The proposed rule included a provision to eliminate the use of cost-reimbursable contracts for SFAs that contract with a FSMC. FNS proposed limiting FSMC contracts in NSLP and SBP to fixed-price contracts, either with or without economic price adjustments tied to a standard index and eliminating cost-reimbursable FSMC contracts in NSLP and SBP. The proposed rule also included two technical changes to align FSMC requirements under 7 CFR 210.16 with existing regulations under 7 CFR parts 210 and 250. These changes would have required State agencies to annually review and approve all contracts and contract amendments between any SFA and FSMC and require an FSMC to credit the value of USDA Foods to the respective SFA.

#### Public Comments

FNS received 107 comments about the proposed elimination of cost-reimbursable contracts. Of these, 15 were supportive, 80 were opposed (including 52 form letters), and 12 were mixed. Proponents agreed that the complexity of rebates, discounts, and credits in cost-reimbursable contracts make the contracts challenging to manage and to monitor. They suggested the elimination of cost-reimbursable contracts would reduce fraud, while creating more straightforward business dealings for SFAs. One food industry representative noted that in order to manage cost-reimbursable contracts effectively, SFAs must devote significant resources to review, monitor, and audit costs and billings. By contrast, another respondent suggested fixed-price contracts allow SFAs to focus on manageable program areas, such as contract compliance. The return of rebates, discounts, and credits is not required under a fixed-price contract, as these factors are considered when submitting the bid. One State agency noted that consistent with its authority in current regulations, all FSMC contracts in that State are already required to be fixed-price.

Opponents were concerned that fixed-price contracts may cause FSMCs to focus on the lowest cost per meal, rather than food quality. They argued that cost-reimbursable contracts offer greater transparency that provides SFAs better management control over the program. For example, a joint comment from four food industry representatives noted that cost-reimbursable contracts allow flexibility for SFAs to incorporate local produce, switch to sustainable paper products, and adjust other associated costs during the contract term.

#### FNS Response

In this final rule, FNS is not eliminating the availability of cost reimbursable contracts as a type of FSMC contract SFAs may use in the NSLP and SBP. As noted in the proposed rule, audit findings, FNS management evaluations, and stakeholder feedback suggested that some SFAs have not been fully successful in conducting procurements or monitoring of cost-reimbursable contracts in the past. The ability of those SFAs to receive the full benefit of the contract terms and achieve administrative and nutritional compliance in the programs was negatively impacted, however given the mixed comments received on the proposed rule FNS has chosen not to finalize this provision as proposed.

In response to the COVID-19 public health emergency and consistent with legislative directives, FNS, State partners, and SFAs developed new approaches that offered unprecedented flexibilities to school meal service and program management, through nationwide waivers. The fundamental goal for each of the waivers was to provide substantive support promoting access to nutritious meals to all children during the COVID-19 pandemic. In 2020, FNS issued guidance, *Nationwide Waiver of Food Service Management Contract Duration in the National School Lunch Program and Summer Food Service Program*, <https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-19>, which waived contract duration requirements for all State agencies, SFAs, and SFSP sponsors. SFAs in States opting to use this waiver could extend contracts with FSMCs beyond the fourth extension year, without undertaking new competitive procurements. The waiver relieved SFAs and FSMCs of the burden of competitive procurements and enabled full focus on preparing and providing nutritious school meals.

In 2021, when FSMCs and schools experienced supply chain disruptions that impacted food, packaging components, and transportation demands, FNS offered States and SFAs flexibilities, resources, and support to compensate for the unpredictability of the supply chain and the new uncertainties in accessing foods and supplies essential for school food service. Despite that, stakeholders provided compelling information indicating that even those contracts which included a price adjustment tied to a standard index—such as the Consumer Price Index—were not flexible enough to fully offset the

contract price to adjust during the COVID-19 pandemic supply chain-related market volatility. In a few instances, FSMCs concluded that withdrawal from the SFA market was in their best interest, leaving affected SFAs with few options in providing school meal service.

As a result of the lessons learned during COVID-19 and in response to the negative and mixed comments received during the comment period when this provision was proposed this final rule does not eliminate cost-reimbursable contracts in NSLP and SBP regulations. In responding to the demands of the COVID-19 pandemic, FNS gained deeper insight into the contractual relationships between SFAs and FSMCs, the financial aspects of those contracts, the impact on school food service workers, and the opportunities FNS may have to support and improve school food service. FNS has concluded that the proposed rule's elimination of cost reimbursable contracting would not be in the best interest of the programs at this time. FNS intends to assess the options and resources which may improve administrative and nutritional compliance, through stakeholder outreach, consultation, and analysis of the data reported as part of the COVID-19 waiver process.

As with the proposed rule, this final rule amends NSLP regulations to require each State agency to annually review and approve each contract and contract amendment between any SFA and FSMC. This final rule also amends NSLP and SBP regulations to require the value of USDA Foods to accrue only to the benefit of the SFA's nonprofit school food service. The proposed rule did not extend these provisions to SBP. However, FNS is correcting this oversight in this final rule. FNS recognizes the importance of consistency and administrative streamlining of Child Nutrition Program and USDA Food regulations. Current NSLP and SBP regulations define cost-reimbursable contract. Finally, for clarity, this final rule adds a definition for fixed-price contract to NSLP and SBP regulations. Fixed-price contract means a contract that charges a fixed cost per meal, or a fixed cost for a certain time period. Fixed-price contracts may include an economic price adjustment tied to a standard index. Current NSLP and SBP regulations define cost-reimbursable contract as a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed fee.

FNS recognizes that SFAs value flexibility in their contracts. For

example, a contract that includes an economic price adjustment tied to a standard index—such as the Consumer Price Index—allows the contract price to adjust during market volatility. The SFA may also include a clause to account for changes in labor cost, such as a minimum wage increase. Additionally, qualitative factors—such as specifications relating to product appeal to students—are allowable evaluation factors that may be published in solicitations, as long as cost is the primary factor. SFAs may also include provisions that penalize an FSMC if meal quality is an issue. FNS recommends that SFAs consult with counsel during the procurement process to ensure that the contract terms are consistent with Federal law and any pertinent State and local laws.

Accordingly, this final rule amends 7 CFR 210.2 and 220.2 to define fixed-price contract in NSLP and SBP. The rulemaking also amends 7 CFR 210.19(a)(5) to require each State agency to annually review—and approve—each contract and contract amendment between any SFA and FSMC, for consistency with 7 CFR 210.16(a)(10). Finally, this rulemaking adds 7 CFR 210.16(c)(4) and 220.7(d)(3)(iv) to require the value of USDA Foods to accrue only to the benefit of the SFA's nonprofit school food service, to align with 7 CFR 210.16(a)(6). The compliance date is August 23, 2024.

#### 10. Annual NSLP Procurement Training

Section 7(g)(2) of the Child Nutrition Act of 1966, 42 U.S.C. 1776(g)(2), requires training for school food service personnel on certain administrative practices and gives USDA discretion to require other appropriate training topics to address critical issues, such as integrity concerns. Current regulations at 7 CFR 210.30(b), (c), and (d) outline the professional standards training requirements for school nutrition program directors, management, and staff, respectively. Current regulations at 7 CFR 235.11(g)(3) outline the training requirements for State directors of school nutrition programs and distributing agencies. The specific annual training requirements vary, but for each position, FNS may identify other training topics, as needed. There are no specific regulatory requirements related to NSLP procurement training.

As discussed in the proposed rule, FNS released a guidance memo strongly encouraging periodic training for State Agency and SFA staff tasked with procurement responsibilities and has taken a number of steps to share information about proper procurement methods. However, State agencies and

SFAs continue to face challenges implementing Federal procurement requirements. Helping State agencies and SFAs better understand procurement responsibilities through adequate training is one way to ensure Federal funds are used appropriately in NSLP. To improve compliance of these important requirements, the proposed rule requires annual procurement training for State agency and SFA staff tasked with procurement responsibilities, with an effective date 90 days after publication of the final rule. The proposed rule also requires State agencies and SFAs to retain records to document compliance with this provision.

#### Public Comments

FNS received 15 comments about NSLP procurement training. Of these, 2 were supportive, 4 were opposed, and 9 were mixed. Proponents described this provision as important and necessary, and stated that annual procurement training would ensure the school nutrition programs use Federal funds efficiently. Some respondents asked for clarification about the implementation of this requirement, including the number of annual training hours required. Regarding the proposal to document training, one respondent noted this would be an important step in assuring accountability. Opponents were concerned that this provision would increase program costs and create burden. They argued that annual procurement training is duplicative or excessive, unless it is necessary to resolve a review finding. One respondent argued that annual trainings in general lose value and become tedious.

#### FNS Response

This final rule requires State directors of school nutrition programs, State directors of distributing agencies, and school nutrition program directors, management, and staff who work on NSLP procurement activities to complete procurement training annually. FNS modified the language in this final rule to align with the school nutrition professional standards. This final rule also amends 7 CFR 210.30 and 235.11 to clarify that NSLP procurement training is subject to professional standards monitoring and recordkeeping requirements and may count towards the professional standards training requirements. This change from the proposed rule streamlines monitoring, recordkeeping, and training requirements.

FNS is mindful of respondents' concerns that NSLP procurement

training will not be relevant to all program staff. FNS recognizes that school nutrition program personnel have a variety of job responsibilities, which may or may not include procurement. FNS does not intend to require all personnel to complete annual procurement training, nor to take time away from other relevant training topics. This requirement only applies to State directors and school nutrition program directors, management, and staff who work on NSLP procurement activities.

FNS will not require a specific number of annual training hours. For personnel with minimal involvement, a brief refresher course may be sufficient. Personnel who are new to NSLP procurement, who are assigned new procurement tasks, or who use more complex procurement methods, such as sealed bids and competitive proposals, may require a full day of training. FNS encourages the training plan that best supports each staff member's job-specific training needs and experience.

Consistent with the professional standards training requirements, a variety of training formats may be used, such as webinars, classroom training, and seminars. State agencies may use SAE funds to pay for the costs of receiving or delivering annual NSLP procurement training. Generally, training is an allowable use of school food service funds. State agencies and SFAs are encouraged to access the free or low-cost training resources listed online at <https://professionalstandards.fns.usda.gov/>.

Annual training is an important step to ensure personnel who work on NSLP procurement activities have the knowledge they need to successfully implement Federal procurement requirements. Ensuring that responsible personnel annually gain knowledge of Federal procurement standards and contract performance monitoring through this regulatory change is an important step towards improving program integrity.

Accordingly, this final rule adds new paragraphs at 7 CFR 210.21(h), 210.30(g)(3), and 235.11(h)(3) to require State directors of school nutrition programs, State directors of distributing agencies, and school nutrition program directors, management, and staff who work on NSLP procurement activities to complete annual procurement training. The compliance date is August 23, 2024.

## II. CACFP Amendments

### A. Background

FNS is also using this opportunity to codify statutory requirements that are

designed to improve the administration and operational efficiency of CACFP, with less paperwork. FNS published a proposed rule, *Child and Adult Care Food Program: Amendments Related to the Healthy, Hunger-Free Kids Act of 2010*, 77 FR 21018, on April 9, 2012, <https://www.fns.usda.gov/cacfp/fr-040912>, that included amendments that would replace the renewal application with an annual certification process, vary the timing of reviews of day care homes and centers, require permanent operating agreements for sponsored centers, broaden procedures for the collection of meal benefit forms for children enrolled in day care homes, and allow carry over and simplified calculation of administrative payments.

Since these changes in CACFP policy were required by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), and FNS released the changes in policy memos, they have become standard operating practices for State agencies and sponsoring organizations. In the intervening years since publication of the proposed rule, due to shifting priorities and the COVID-19 pandemic, FNS was unable to publish subsequent rulemaking to incorporate these statutory amendments into CACFP regulations under 7 CFR part 226. Through this final rule, FNS is incorporating only the statutory amendments proposed in the *Child and Adult Care Food Program: Amendments Related to the Healthy, Hunger-Free Kids Act of 2010*, 77 FR 21018, on April 9, 2012, <https://www.fns.usda.gov/cacfp/fr-040912>, into CACFP regulations.

FNS received 27 comments in response to the proposed rule. Many of them pointed out technical errors, questioned potential gaps in implementation, and offered valuable suggestions for improvement, but none of the comments objected to any of the six amendments, which are required by statute. There were no adverse comments challenging the rule's underlying premise or approach or suggesting that the content of the rule would be inappropriate, ineffective, or unacceptable without a change. The comments are posted at <http://www.regulations.gov> under docket ID FNS-2012-0022, *Child and Adult Care Food Program: Amendments Related to the Healthy, Hunger-Free Kids Act of 2010*.

The amendments included in this final rule:

- Require institutions to submit an initial application to the State agency and, in subsequent years, periodically update the information, in lieu of submitting a new application;

- Require sponsoring organizations to vary the timing of reviews of sponsored facilities;

- Require State agencies to develop and provide for the use of a standard permanent agreement between sponsoring organizations and day care centers;

- Allow tier II day care homes to collect household income information and transmit it to the sponsoring organization;

- Modify the method of calculating administrative payments to sponsoring organizations of day care homes; and

- Allow sponsoring organizations of day care homes to carry over up to 10 percent of their administrative funding from the previous Federal fiscal year into the next fiscal year.

### B. Codifying the CACFP Amendments

#### 1. Elimination of the Annual Application for Renewing Institutions

Annual certification of an institution's eligibility to continue participating in CACFP has replaced the renewal application process. Section 17(d)(2) of the NSLA, as amended by HHFKA, directs the Secretary to develop a policy to address the initial application requirements for institutions and annual confirmation of compliance with licensing and all other requirements for institutions and facilities to continue to participate in CACFP. These amendments required changes to current regulations, which require institutions to submit an annual application to participate in the program. Renewing institutions must re-apply at intervals of between 12 and 36 months after their initial application was approved by the State agency.

FNS issued CACFP 19-2011, *Child Nutrition Reauthorization 2010: Child and Adult Care Food Program Applications*, on April 8, 2011, <https://www.fns.usda.gov/cacfp/applications>, to provide guidance regarding the HHFKA requirements that renewing institutions must submit an annual certification of information, updated licensing information, and a budget. FNS included the requirements for annual certification in the April 9, 2012, proposed rule for the public to review and comment on. FNS did not receive any substantive comments on this provision.

This final rule adopts these changes, as proposed, by amending 7 CFR 226.6(b) to require an initial application for new institutions and annual confirmation for renewing institutions that they are compliant with program requirements. Renewing sponsoring organizations must submit updated

licensing information for its sponsored facilities, an annual budget, and an annual certification of compliance with all of the requirements under 7 CFR 226.6(b)(2) and 226.6(f)(1). The renewing sponsoring organization must certify that:

- The management plan on file with the State agency is complete and up to date, per 7 CFR 226.6(b)(1)(iv);
- The sponsoring organization and its principals are not currently on the National Disqualified List, per 7 CFR 226.6(b)(1)(xii);
- No sponsored facility or principal of a sponsored facility is currently on the CACFP National Disqualified List, per 7 CFR 226.6(b)(1)(xii);
- A list of any publicly funded programs that the sponsoring organization and its principals have participated in, in the past 7 years, is current, per 7 CFR 226.6(b)(1)(xiii)(B);
- The sponsoring organization and its principals have not been determined ineligible for any other publicly funded programs due to violation of that program's requirements, in the past 7 years, per 7 CFR 226.6(b)(1)(xiii)(B);
- No principals have been convicted of any activity that occurred during the past 7 years and that indicated a lack of business integrity, per 7 CFR 226.6(b)(1)(xiv)(B);
- The names, mailing addresses, and dates of birth of all current principals have been submitted to the State agency per 7 CFR 226.6(b)(1)(xv);
- The outside employment policy most recently submitted to the State agency remains current and in effect, per 7 CFR 226.6(b)(1)(xvi);
- The sponsoring organization is currently compliant with the required performance standards of financial viability and management, administrative capability, and program accountability, per 7 CFR 226.6(b)(1)(xviii);
- Licensing or approval status of each sponsored child care center, adult day care center, or day care home is up-to-date;
- The list of the sponsoring organization's facilities on file with the State agency is up-to-date; and
- All facilities under the sponsoring organization's oversight have adhered to Program training requirements.

Renewing independent centers must submit updated licensing information and an annual certification of compliance with all of the requirements under 7 CFR 226.6(b)(2) and 226.6(f)(1). The renewing independent center must certify that:

- The center and its principals are not currently on the National Disqualified List, per 7 CFR 226.6(b)(1)(xii);

- A list of any publicly funded programs that the center and its principals have participated in the past 7 years is current, per 7 CFR 226.6(b)(1)(xiii)(B);

- The center and its principals have not been determined ineligible for any other publicly funded programs due to violation of that program's requirements in the past 7 years, per 7 CFR 226.6(b)(1)(xiii)(B);

- No principals have been convicted of any activity that occurred during the past 7 years and that indicated a lack of business integrity, per 7 CFR 226.6(b)(1)(xiv)(B);

- The names, mailing addresses, and dates of birth of all current principals have been submitted to the State agency per 7 CFR 226.6(b)(1)(xv);

- The center is currently compliant with the required performance standards of financial viability and management, administrative capability, and program accountability, per 7 CFR 226.6(b)(1)(xviii); and

- Licensing or approval status of each child care center or adult day care center.

State agencies may add to this list other types of information that they require annually for proper administration of the program, such as submission of budgets by independent centers, which is not a Federal requirement. The miscellaneous responsibilities currently listed under 7 CFR 226.6(f)(3)(iv) include additional reporting requirements for CACFP institutions. This final rule makes a corresponding change to remove the reapplication requirements under 7 CFR 226.6(f)(2) and move the responsibilities at other time intervals, listed under paragraph (f)(3), to paragraph (f)(2).

Accordingly, as required by statute, this action amends 7 CFR 226.2, and 226.6(b) to require an initial application for new institutions and annual updates, as needed, for renewing institutions. A corresponding change is made at 7 CFR 226.6(f). This provision has been a standard operating practice for State agencies since 2011. The compliance date is September 22, 2023.

## 2. Timing of Unannounced Reviews

Reviews are more effective at ensuring program integrity when they are unannounced and unpredictable. Section 17(d)(2)(B)(ii) of the NSLA requires sponsoring organizations to vary the timing of unannounced reviews in a manner that makes the reviews unpredictable to sponsored facilities. Current regulations require sponsoring organizations to conduct three reviews per year at each facility, two of which must be unannounced. One of the

unannounced reviews must include observation of a meal service. No more than 6 months may elapse between reviews. However, there is no current regulatory requirement that the timing of those reviews must be varied.

FNS issued CACFP 16–2011, *Child Nutrition Reauthorization 2010: Varied Timing of Unannounced Reviews in the Child and Adult Care Food Program*, on April 7, 2011, <https://www.fns.usda.gov/cacfp/varied-timing-unannounced-reviews-child-and-adult>, to advise State agencies of the new statutory requirement under HHFKA to ensure that the timing of unannounced reviews is varied in a way that would ensure they are unpredictable to the day care home or sponsored center. FNS included the requirements for the timing of unannounced reviews in the CACFP proposed rule for the public to review and comment on. FNS did not receive any substantive comments on this provision.

This final rule adopts these changes by amending 7 CFR 226.16(d)(4)(iii) to require sponsoring organizations to vary both the timing of unannounced reviews and the types of meal service that are subject to review. This rulemaking also amends the review content at 7 CFR 226.6(m)(3) to add a requirement that the State agency assess the frequency, predictability, and type of each sponsoring organization's facility reviews. Effective monitoring of day care homes and sponsored centers will require sponsoring organizations to ensure that:

- At least two of the three annual reviews are unannounced;
- At least one unannounced review includes observation of a meal service;
- At least one review is made during each new facility's first 4 weeks of program operations;
- No more than 6 months elapse between reviews;
- The timing of unannounced reviews is varied so that they are unpredictable to the facility;
- All types of meal service are reviewed; and
- The types of meal service reviewed are varied.

Accordingly, this final rule amends 226.16(d)(4)(iii) to require sponsoring organizations to vary the timing of unannounced reviews and vary the type of meal service subject to review. A corresponding change is made at 7 CFR 226.6(m)(3)(ix) to require the State agency to assess the timing of each sponsoring organization's reviews of day care homes and sponsored centers. This provision has been a standard operating practice for sponsoring organizations and State agencies since

2011. The compliance date is September 22, 2023.

### 3. Standard Agreements Between Sponsoring Organizations and Sponsored Centers

Section 17(j) of the NSLA requires State agencies to develop and provide for the use of a standard form of agreement between each sponsoring organization and day care home or sponsored center. Current regulations require the sponsoring organization to enter into a written permanent agreement with each sponsored day care home, which specifies the rights and responsibilities of both parties. However, there is no standard form of agreement and no requirement that sponsoring organizations establish agreements with sponsored centers.

FNS included the requirements for standard operating agreements in the CACFP proposed rule for the public to review and comment on. FNS did not receive any substantive comments on this provision. FNS proposed establishing a standard form of agreement between sponsoring organizations and their sponsored centers at 7 CFR 226.16(h) that would specify the rights and responsibilities of each party.

This final rule adopts the proposed terms of a standard agreement between a sponsoring organization and a child care center at 7 CFR 226.17, an at-risk afterschool care center at 7 CFR 226.17a, an outside-school-hours care center at 226.19, and an adult day care center at 226.19a. The standard agreement, described at 7 CFR 226.6(p), requires the center to:

- Allow visits by sponsoring organizations or State agencies to review meal service and records;
- Promptly inform the sponsoring organization about any change in its licensing or approval status;
- Meet any State agency approved time limit for submission of meal records; and
- Distribute to parents a copy of the sponsoring organization's notice to parents if directed to do so by the sponsoring organization.

The standard agreement also establishes the right of centers to receive timely reimbursement from the sponsoring organizations for meals served. Consistent with the requirement under 7 CFR 226.16(h)(2), sponsoring organizations must pay program funds to child care centers, adult day care centers, emergency shelters, at-risk afterschool care centers, or outside-school-hours care centers within 5 working days of receipt from the State agency.

FNS also proposed a corresponding amendment to define "Facility" under 7 CFR 226.2. In this final rule, facility means a sponsored center or day care home. FNS is finalizing a new definition of "Sponsored center", as proposed, to mean a child care center, an at-risk afterschool care center, an adult day care center, an emergency shelter, or an outside-school-hours care center that operates CACFP under the auspices of a sponsoring organization. A sponsored center may be either affiliated—as part of the same legal entity as the CACFP sponsoring organization—or unaffiliated, which is legally distinct from the sponsoring organization.

Accordingly, this final rule amends 7 CFR 226.6(p) and 226.17a(f) and adds new paragraphs at 226.17(e) and (f), 226.19(d) and (e), and 226.19a(d) and (e) to require sponsoring organizations to enter into permanent agreements with their unaffiliated centers. New definitions of "Facility" and "Sponsored center" are added under 7 CFR 226.2. This provision is a standard operating practice for sponsoring organizations. The compliance date is September 22, 2023.

### 4. Collection and Transmission of Household Income Information

Section 17(f)(3)(A)(iii)(III)(dd) of the NSLA allows day care homes to assist in the transmission of necessary household income information to the sponsoring organization. Section 17(f)(3)(A)(iii)(III)(ee) directs the Secretary to develop policy specifying the written consent of parents and other conditions, which would allow day care home providers to assist in transmitting meal benefit forms from parents to the sponsoring organizations.

Current regulations include procedures for families whose children are enrolled in family day care to provide household income information on meal benefit forms that are transmitted directly to the sponsoring organization. The sponsoring organization is responsible for informing tier II day care homes of all of their options for receiving reimbursement for meals served to enrolled children, including electing to have the sponsoring organization attempt to identify all income-eligible children enrolled in the day care home, through collection of meal benefit forms. The sponsoring organization must also ensure that free and reduced-price eligibility information of individual households is not available to day care homes.

FNS issued CACFP 17–2011, *Child Nutrition Reauthorization 2010: Transmission of Household Income*

*Information by Tier II Family Day Care Homes in the Child and Adult Care Food Program*, on April 7, 2011, <https://www.fns.usda.gov/cacfp/transmission-household-income-information-tier-ii>. This guidance describes how tier II family day care home providers may participate in the collection and transmission of household information. The guidance also outlines the options and privacy protections available to households. FNS included these options in the CACFP proposed rule for the public to review and comment on. FNS did not receive any substantive comments on this provision.

This final rule adopts these options by amending the sponsoring organization's responsibility under 7 CFR 226.18(b)(13) to allow tier II day care homes to assist in collecting meal benefit forms from households and transmitting the forms to the sponsoring organization on the household's behalf. It is important to emphasize that this is an option available to day care home providers and households. The State agency or sponsoring organization cannot require day care homes to collect and transmit this information. Households cannot be required to return their meal benefit forms directly to the provider.

The sponsoring organization is also responsible for establishing procedures that prohibit a day care home provider who chooses this option from reviewing or altering the information on the meal benefit form. This rule finalizes a new paragraph at 7 CFR 226.23(e)(2)(vii) as proposed with minor clerical adjustments to further require the sponsoring organizations to protect the privacy of a household's income information. Households of children enrolled in tier II day care homes that elect this option must give their consent for the collection and transmission of their information. The household must be advised that:

- The household is not required to complete the meal benefit form in order for a child to participate in CACFP;
- The household may return the meal benefit form to either the sponsoring organization or the day care home provider;
- By signing the letter and giving it to the day care home provider, the household has given the day care home provider written consent to collect and transmit the household's application to the sponsoring organization; and
- The meal benefit form will not be reviewed by the day care home provider.

Accordingly, this final rule adds a new paragraph at 7 CFR 226.18(b)(13) to add the right of the tier II day care home



to assist in collecting and transmitting applications to the sponsoring organizations and prohibit the provider from reviewing applications from households. This final rule also adds a new paragraph at 7 CFR 226.23(e)(1)(vii) to address household consent and actions to protect the privacy of a household's income information. This provision has been a standard operating practice for sponsoring organizations of day care homes since 2011. The compliance date is September 22, 2023.

#### 5. Calculation of Administrative Funding for Sponsoring Organizations of Day Care Homes

Section 17(f)(3)(B)(i) of the NSLA authorizes reimbursement for administrative expenses of sponsoring organizations of day care homes and applies a formula for calculating the amount of administrative reimbursement a sponsoring organization may receive. As amended by HHFKA, section 17(f)(3) of the NSLA by eliminating the "lesser of" cost and budget comparison for calculating administrative payments to sponsoring organizations of day care homes, as defined under current regulations at 7 CFR 226.12(a). Under current regulations, the State agency determines administrative reimbursement by calculating and paying the "lesser of" actual administrative costs, budgeted administrative costs, or an amount established by a formula.

FNS issued CACFP 06–2011, *Child Nutrition Reauthorization 2010: Administrative Payments to Family Day Care Home Sponsoring Organizations*, on December 22, 2010, <https://www.fns.usda.gov/cacfp/2010-administrative-payments-family-day-care-home>, to advise State agencies that a simpler method for determining monthly administrative payments had been established by HHFKA. Effective October 1, 2010, the sponsoring organization's monthly payment would be based on the statutory formula that would no longer require a comparison with actual expenditures or budgeted administrative costs. FNS included the requirements for calculating administrative payments in the CACFP proposed rule for the public to review and comment on. FNS did not receive any substantive comments on this provision.

This final rule adopts this change by amending 7 CFR 226.12(a) to establish that administrative costs payments are determined only by multiplying the appropriate administrative reimbursement rate by the number of day care homes submitting claims for reimbursement during the month.

Administrative reimbursement rates are announced annually in the **Federal Register**.

Sponsoring organizations are still required to submit annual budgets and remain responsible for correctly accounting for costs and maintaining records and sufficient supporting documentation to demonstrate that the claimed costs were incurred, are allocable to the program, and comply with Federal regulations and policies. State agencies must continue to recover reimbursements that are unallowable or that lack adequate documentation. However, the expenditures for administrative costs, the amount of costs approved in the administrative budget, and the 30 percent restriction on the total amount of administrative payments and food service payments for day care home operations no longer apply in determining the sponsoring organization's monthly payment.

Accordingly, this final rule amends 7 CFR 226.12(a) to simplify the calculation of monthly administrative reimbursement that sponsoring organizations of day care homes are eligible to receive. To determine the amount of payment, the State agency must multiply the appropriate administrative reimbursement rate, which is announced annually in the **Federal Register**, by the number of day care homes submitting claims for reimbursement during the month. This provision has been a standard operating practice for State agencies since 2010. The compliance date is September 22, 2023.

#### 6. Carryover of Administrative Funding for Sponsoring Organizations of Day Care Homes

Section 17(f)(3)(B)(iii) of the NSLA, as amended by HHFKA, directs the Secretary to develop procedures under which up to 10 percent of a sponsoring organization's administrative funds may remain available for obligation or expenditure in the succeeding fiscal year. It allows sponsoring organizations to carry over up to 10 percent of their administrative payments from the previous fiscal year into the next fiscal year. There is no provision for carryover of administrative payments in current regulations.

FNS issued a memorandum, CACFP 18–2011 *Child Nutrition Reauthorization 2010: Carry Over of Unused Child and Adult Care Food Program Administrative Payments*, on April 8, 2011, <https://www.fns.usda.gov/cacfp/carry-over-unused>. FNS advised State agencies of the option available to sponsoring organizations of day care homes to carry

over up to 10 percent of unspent administrative reimbursement from the current Federal fiscal year to the next fiscal year.

FNS issued additional guidance, CACFP 11–2012, *Family Day Care Home Administrative Reimbursements: Options and Carryover Reporting Requirements*, on March 19, 2012, <https://www.fns.usda.gov/cacfp/family-day-care-home-administrative-reimbursements-options-and-carryover-reporting>, and CACFP 24–2012: REVISED, *Family Day Care Home Administrative Reimbursements: Carryover Reporting Requirements for Fiscal Year 2012 and All Subsequent Years*, on September 5, 2012, <https://www.fns.usda.gov/cacfp/family-day-care-home-administrative-reimbursements-carryover-reporting-requirements-fy-2012>. These memoranda provided clarification of options regarding administrative reimbursements and the management of unspent funds that may be carried over from the current Federal fiscal year to the next fiscal year. They also described procedures for reporting administrative funds under a 2-year period of performance.

FNS included the requirements allowing sponsoring organizations of day care homes to carry over administrative funding in the CACFP proposed rule for the public to review and comment on. FNS did not receive any substantive comments on this provision. This final rule amends 7 CFR 226.12(a) to allow a sponsoring organization to carry over and obligate a maximum of 10 percent of administrative funds into the succeeding fiscal year, with State agency approval. Corresponding amendments at 7 CFR 226.6(f)(1)(iv), 226.7(g) and 226.7(j), require State agencies to ensure that:

- The annual budget that is submitted for the State agency's review and approval includes an estimate of the sponsoring organization's requested administrative fund carryover amounts and a description of the proposed purpose for obligating or expending those funds;

- An amended budget, which identifies the amount of administrative funds that the sponsoring organization actually carried over and describes the purpose, is submitted for the State agency's review and approval as soon as possible after fiscal year close-out;

- The review of the sponsoring organization's administrative costs includes a review of the documentation supporting carryover requests, obligations, and expenditures; and

- Procedures are established to recover any administrative funds that exceed 10 percent of that fiscal year's administrative payments, and any carryover amount that is not expended or obligated by the end of the fiscal year following the fiscal year in which the funds were earned.

Administrative funds remaining at the end of the fiscal year must be returned to the State agency. If any remaining carryover funds are not obligated or expended by the sponsoring organization in the succeeding fiscal year, the sponsoring organization is required to return the remaining funds to the State agency. A sponsoring organization can avoid that situation by using its payments for administrative costs on a first-in-first-out basis.

Sponsoring organizations are not required to carry over any unspent funds. They may, at their option, return them to the State agency. The sponsoring organization also has the option to request that the State agency base administrative payments on the sponsoring organization's actual expenses. However, sponsoring organizations receiving administrative payments based upon actual expenses are not permitted to carry over funds into the next fiscal year.

Accordingly, this final rule amends 7 CFR 226.6(f)(1)(iv) and adds new paragraphs at 226.7(g)(2) and 226.12(a)(3) to allow carryover of administrative funds with State agency approval. This rulemaking also amends 7 CFR 226.7(j) and adds a new paragraph 226.12(a)(4) to require the State agency to establish procedures to recover administrative funds from sponsoring organizations of day care homes that are not properly payable, are in excess of the 10 percent maximum carryover amount, or any carryover amounts not expended or obligated by the end of the fiscal year following the fiscal year in which they were earned. This provision has been a standard operating practice for sponsoring organizations and State agencies since 2011. The compliance date is September 22, 2023.

### III. Simplifying Monitoring in NSLP and SBP

#### A. Background

State agencies are responsible for regularly monitoring SFA operations in NSLP and SBP, in addition to providing training and technical assistance. Since School Year 2013–2014, the unified administrative review process has provided State agencies with a comprehensive process for evaluating compliance with program requirements.

It includes a review of an SFA's financial practices, compliance with nutrition standards, and a review of program operations to ensure compliance with Federal regulations.

This final rule provides a means for FNS to amend the administrative review process. State agencies and SFAs have called on FNS to streamline requirements so that they could more effectively direct their resources to their core mission of serving nutritious meals to children. FNS looked for opportunities to reduce administrative burden addressing findings from USDA's *Child Nutrition Reporting Burden Analysis Study*, released in 2019, <https://www.fns.usda.gov/child-nutrition-reporting-burden-analysis-study>, in a responsible way, while giving consideration to local resource constraints. In a proposed rule, *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs*, 85 FR 4094, on January 23, 2020, <https://www.fns.usda.gov/nslp/fr-012120>, FNS suggested a number of discretionary changes to streamline the administrative review, without compromising State agency and SFA efforts to maintain accountability and integrity.

Through this final rule, FNS is taking action to codify the proposed changes to monitoring. These amendments will give State agencies greater flexibility, eliminate redundancy, and target limited State resources to higher risk SFAs. This rulemaking includes amendments to:

- Allow State agencies to return to a 5-year administrative review cycle and require State agencies that conduct reviews on a longer than 3-year cycle to identify high-risk SFAs for additional oversight at 7 CFR 210.18(c);
- Give State agencies flexibility to substitute information from local-level audits for related parts of the administrative review, at 7 CFR 210.18(f)(3);
- Reduce the performance-based reimbursement reporting requirement, from quarterly to annually, by removing 7 CFR 210.5(d)(2)(ii) and 210.7(d)(1)(vii) and (d)(2), which are obsolete;
- Allow State agencies to omit specific elements of the administrative review, when equivalent oversight activities are conducted outside of the administrative review process, at 7 CFR 210.18(f), (g), and (h);
- Adopt a framework that State agencies may elect to modify the administrative review if the State agency or SFA adopts the specified integrity-focused improvements, at 7 CFR 210.18(f), (g), and (h);

- Give State agencies flexibility to conduct the assessment of an SFA's nonprofit school food service account at any point in the review process, at 7 CFR 210.18(h)(1);

- Include compliance with the Buy American requirement as part of the general areas of the administrative review, at 7 CFR 210.18(b) and (h)(2);

- Removes requirement for required fiscal action against SFAs for repeated violations of meal pattern noncompliance, at 7 CFR 210.18(l)(2); and

- Allow State agencies to conduct the FSMC review on a 5-year cycle, at 7 CFR 210.19(a)(5).

FNS received 57,248 public comments on the proposed rule. Nearly all of the comments were submitted in response to proposed amendments related to school meal nutrition standards, which are not addressed in this final rule but are instead addressed in a separate rulemaking. The comments are posted at <http://www.regulations.gov> under docket ID FNS–2019–0007, *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs*.

Although less than 150 respondents addressed any of the proposed changes to monitoring under the administrative review process, the comments were overall supportive of proposed changes. Respondents agreed that the proposed monitoring amendments would free up time and resources for State agencies to more effectively perform reviews, provide technical assistance, and focus on program improvement. They championed the increased flexibility, reduced redundancy, and paperwork savings that would be achieved. Their comments expressed support for changes that would allow opportunities for State agencies to provide technical assistance, instead of what respondents perceived as penalizing schools. Respondents also asserted that the proposed rule would provide State agencies the autonomy to determine the review processes that make the most operational sense for their situation.

In addition to providing training and technical assistance, State agencies are responsible for regularly monitoring SFA operations. Since School Year 2013–2014, the unified administrative review process has provided a more robust review of the school meal programs. It also includes a review of an SFA's financial practices through the Resource Management Module to better ensure compliance with Federal regulations.

As was discussed in the proposed rule, program regulations under 7 CFR

210.18 address various aspects of the administrative review, including the timing of review, use of audit findings as part of the scope of review, areas of critical and general review, corrective action, withholding of payments, fiscal action, and appeal rights. FNS examined the review process to identify a number of elements that could favorably reduce administrative burden in a responsible way.

### *B. Streamlining the Administrative Review Process*

#### 1. Return to a 5-Year Review Cycle

The unified administrative review process provides a robust review of the school meal programs, supporting integrity and administrative responsibility. Current regulations at 7 CFR 210.18(c) require State agencies to conduct a comprehensive administrative review of each SFA participating in NSLP and SBP at least once during a 3-year cycle.

FNS proposed modifying the review cycle to ease the burden for State agencies and SFAs, by allowing State agencies to return to a 5-year administrative review cycle. An SFA that has any findings on the previous administrative review or noncompliance with Federal procurement regulations would be designated high risk. The proposed rule would require State agencies to designate and, within 2 years, perform follow-up reviews of high-risk SFAs. The proposed rule would also allow State agencies to conduct more frequent reviews.

FNS received 147 comments on the proposed 5-year review cycle—97 were supportive, 38 were opposed, and 12 were mixed. Proponents recognized that the high number of waivers granted to State agencies under the current waiver process—which allows State agencies to request to extend the 3-year review cycle—underscores the need for relief. State agencies currently using waivers to extend their review cycles have reported that it allows them to better balance resources between technical assistance and formal reviews, and better support schools in their operations. Many respondents supported requiring targeted follow-up reviews for high-risk SFAs, maintaining that additional oversight could improve their performance. Many also agreed that a risk-based approach would target limited State agency oversight resources where they are most needed.

Opponents suggested that a 5-year gap between reviews would be too long and could weaken program integrity. Instead of making this change, they suggested that FNS retain the 3-year cycle and

work to streamline the administrative review process or ensure that SFAs selected for follow-up reviews receive technical assistance. FNS is committed to robust oversight, integrity, and quality in the school meal programs. However, FNS recognizes that the 3-year review cycle is taxing for State agencies and SFAs and diverts resources from technical assistance and program improvement.

This final rule amends 7 CFR 210.18(c), to allow State agencies to implement a 5-year administrative review cycle, while targeting additional oversight to those SFAs most in need of assistance. State agencies may continue with a shorter review cycle if they wish to do so. This rule also requires State agencies that review SFAs on a longer than 3-year cycle to identify high-risk SFAs for additional oversight. SFAs in need of more frequent monitoring—those that present program integrity concerns—will receive it through the required targeted follow-up review. Each State agency that reviews SFAs on a longer than 3-year cycle must develop a plan for FNS approval describing the criteria that will be used to identify high-risk SFAs for targeted follow-up reviews.

In this final rule, minimum high-risk criteria that must be included in State plans will be outlined at 7 CFR 210.18(c)(2). These core elements are consistent with recommendations from State agencies to focus on compliance with the performance standards and the appropriate use of Federal funds. State agencies may add other criteria and use other information to designate an SFA as high-risk on a case-by-case basis.

State agencies must also conduct a targeted follow-up review of any SFA designated as high-risk within 2 years of the initial review. The targeted follow-up review must, at a minimum, include the areas identified in the most recent review that caused the SFA to be designated high-risk.

FNS also proposed a corresponding change at 7 CFR 210.19(a)(5) to align the food service management company (FSMC) review with the 5-year administrative review cycle. FNS received 19 comments on this proposal—13 were supportive, 3 were opposed, and 3 were mixed. Most respondents cited the same reasons for supporting or opposing a return to a 5-year administrative review cycle. One respondent argued that there should be no change in cycle because the review of FSMCs is primarily a procurement review, which would be completed annually off-site. Another suggested that more frequent reviews of invoices should be conducted instead.

Accordingly, this final rule amends 7 CFR 210.18(c), and allow State agencies to implement a 5-year administrative review cycle, while targeting additional oversight to those SFAs most high risk. This final rule also amends 7 CFR 210.19(a)(5) to allow State agencies to conduct the FSMC review on a 5-year cycle to align with the administrative review cycle. This final rule does not make any changes to the oversight of FSMCs, including the requirement for State agencies to review each contract between an SFA and FSMC annually. State agencies may continue with a shorter FSMC review cycle if they wish to do so. The compliance date is July 1, 2024.

#### 2. Substitution of Local-Level Audits

Current regulations at 7 CFR 210.18(f)(3) allow State agencies to use applicable findings from federally-required audit activity or State-imposed audit requirements in lieu of reviewing the same information on an administrative review, provided the audit activity complies with the same standards and principles that govern the Federal single audit. FNS proposed building on this flexibility by expanding the allowable use of local-level audits. The proposed rule would allow State agencies to use recent and applicable findings from local-level audits initiated by SFAs or other entities including tribes, supplementary audit activities, or requirements added to Federal or State audits by local operators, as long as the audit activity complies with the same standards.

FNS received 47 comments that addressed this proposed amendment—38 were supportive, 3 were opposed, and 6 were mixed. One respondent argued that external audits would only add confusion because they do not necessarily align with the same standards used in the administrative review process. However, FNS agrees with most respondents that the use of local-level audits will simplify monitoring—limiting unnecessary duplication of efforts and minimizing burden on State agency staff—without compromising program integrity.

Accordingly, this final rule amends 7 CFR 210.18(f)(3) to allow State agencies, with FNS approval, to use information from local-level audits to substitute for related parts of the administrative review. Requiring FNS approval will ensure that the local-level audit aligns with Federal audit standards. The compliance date is July 1, 2024.

### 3. Completion of Review Requirements Outside of the Administrative Review

State agencies conduct a variety of oversight activities outside of the formal administrative review process. FNS proposed adding a new amendment under 7 CFR 210.18(f), (g), and (h), to allow State agencies to satisfy sections of the administrative review through equivalent State oversight activities that take place outside of the formal administrative review process, if the State agency or SFA has implemented FNS-specified error reduction strategies or monitoring efficiencies. In other words, State agencies would be able to omit specific, redundant areas of the administrative review, when sufficient oversight is conducted elsewhere.

FNS received 22 comments on this proposal—21 were supportive and 1 was opposed. Respondents described a number of equivalent State oversight activities that would satisfy sections of the administrative review, including health inspections, validation of Community Eligibility Provision source data at the time of election, school reports of financial revenues and expenses, information collected during annual agreement renewals, on-site and comprehensive technical assistance visits, and review of financial and other types of reports. FNS agrees with respondents that this proposed amendment will increase flexibility and reduce redundancy by allowing State agencies to satisfy parts of the administrative review through activities they have already performed.

Accordingly, this final rule amends 7 CFR 210.18(f), (g), and (h) to allow State agencies, with FNS approval, to omit specific, redundant areas of the administrative review, when sufficient oversight is conducted outside of the administrative review. Each of these State agencies must submit a plan, for FNS approval, that describes the State agency's specific oversight activities and the critical or general areas of review that would be replaced. State agencies must submit updates or additions to their plan for FNS approval. The compliance date is July 1, 2024.

### 4. Framework for Integrity-Focused Process Improvements

To address the improper payment challenges facing the NSLP and SBP, where much of the underlying program error cannot be identified or addressed through monitoring alone, additional efforts must be directed to process reform. FNS proposed further amending 7 CFR 210.18(f), (g), and (h) to allow State agencies to elect to modify, reduce, or eliminate a specified

administrative review requirement, if the State agency or the SFA has adopted a given set of process improvements. The goal would be to redirect some of the costs of the administrative review into State agency or SFA investment in designated systems or process improvements to reduce or eliminate program errors. The streamlined review would be the incentive to make the necessary investments in systems or process improvements that can reduce or eliminate program errors.

FNS received 26 comments on this proposal—12 were supportive, 3 were opposed, and 11 were mixed. Many of the comments identified potential challenges or asked for clarification. For example, respondents requested more specific information on what the integrity-focused processes entail, expressed concerns about potential impacts of the proposal on State agencies or SFAs, and posed questions about the effect of proposed integrity features. FNS believes that providing States and SFAs the option of adopting integrity focused process reforms could increase outcomes and decrease errors.

FNS intends to develop guidance and a series of FNS-approved optional process reforms that respond to the latest findings from USDA research, independent audits, and FNS analysis of administrative data that State agencies and SFAs may adopt. FNS understands there will be costs associated with some of these process reforms, but that these will be offset, in whole or in part, through savings from the streamlined administrative review.

FNS will test potential reforms, in cooperation with State and local program administrators, to assess their feasibility and effectiveness. States or SFAs may then adopt these FNS-approved process reforms, at their option, in exchange for elimination, modification, or reduction of existing administrative review requirements. FNS anticipates that this package of optional reforms will grow over time in response to new research and changes in the nature of the integrity challenges facing the programs.

Accordingly, this final rule amends 7 CFR 210.18(f), (g), and (h) to allow State agencies to omit designated areas of review, in part or entirely, where a State agency or SFA has implemented FNS-specified error reduction strategies or utilized FNS-specified monitoring efficiencies. The effective date is September 22, 2023.

### 5. Assessment of Resource Management Risk

Current regulations at 7 CFR 210.18(h)(1) direct State agencies to

perform an off-site assessment of an SFA's nonprofit school food service account to evaluate the risk of noncompliance with resource management requirements. If risk indicators show that the SFA is at high risk for noncompliance with resource management requirements, the State agency must conduct a comprehensive review. FNS proposed giving State agencies discretion to conduct this assessment at any point in the review process rather than requiring it to take place off-site.

FNS received 19 comments on this proposal—16 were supportive and 3 were opposed. While proponents supported greater flexibility for State agencies to determine when and how they conduct the resource management module, opponents were concerned that reviews would become less efficient and more disruptive to SFAs under this proposal. For example, one respondent argued that SFAs need a firm timeline to prepare for the administrative review. FNS recognizes that allowing State agencies to set up the review process to meet their needs will increase the usefulness of the resource management assessment, while reducing unnecessary burden.

Accordingly, this final rule amends 7 CFR 210.18(h)(1) to allow State agencies to conduct the assessment of an SFA's nonprofit school food service account at any point in the review process. Similar to the on-site portion of the review, FNS will no longer require that this assessment take place off-site before the administrative review. Although the State agency should make this assessment in the school year that the review began, completion of the resource management module may occur before, during, or after the on-site portion of the administrative review. The compliance date is September 22, 2023.

### 6. Buy American Area of Review

Program regulations under 7 CFR 210.21(d) and 7 CFR 220.16(d) describe requirements SFAs must follow to purchase, to the maximum extent practicable, domestic commodities or products and State agencies already review this provision as a part of the administrative review. However, Buy American is not currently included in regulation as part of the general areas of the administrative review. FNS proposed including compliance with the Buy American requirements as a general area of review, under 7 CFR 210.18(h)(2), that State agencies must monitor when they conduct administrative reviews.

FNS received 20 comments—9 were supportive, 4 were opposed, and 7 were mixed. While many of the comments went beyond the scope of the proposed rule, one respondent argued that a Buy American review should be included in either the oversight of procurement practices required under governmentwide regulations at 2 CFR 200 or the administrative review, but not both. State agencies review Buy American on-site through the administrative review, which then allows the State agency to conduct the oversight of procurement practices entirely off-site. To the extent practicable, these review teams should coordinate reviews and communicate findings in order to provide comprehensive monitoring of the Buy American requirements.

Accordingly, this final rule amends 7 CFR 210.18(h)(2) to add a new paragraph (xi) to require State agencies to ensure compliance with the Buy American requirements to purchase domestic commodities or products. This final rule also makes a corresponding technical change to the definition of “General areas” under 7 CFR 210.18(b). This small change provides consistency by aligning the lists of general areas of review that appear in paragraphs (b) and (h)(2). The compliance date is September 22, 2023.

#### 7. Discretion in Taking Fiscal Action for Meal Pattern Violations

Current regulations at 7 CFR 210.18(l)(2) require State agencies to take fiscal action to recover Federal funds from SFAs for repeated violations of milk type and vegetable subgroup requirements. FNS proposed to instead give the State agency discretion to take fiscal action against SFAs for repeated violations of milk type and vegetable subgroup requirements. This would align with current State discretion to take fiscal action to address repeated violations of food quantity, whole grain-rich, and dietary specifications requirements.

FNS received 54 comments on this proposal—23 were supportive, 28 were opposed, and 3 were mixed. Proponents suggested that this amendment would allow State agencies to provide technical assistance, instead of penalizing schools for unintentional errors. Opponents argued that continued violations of program requirements should be addressed uniformly, with consequences that will prevent integrity concerns. FNS continues to believe that implementing this amendment will increase efficiency and reduce burden, without compromising integrity.

While most SFAs strive to make a good faith effort to comply with meal pattern requirements, FNS recognizes that some SFAs may need additional support from the State agency to fully and correctly implement the meal pattern. Rather than require State agencies to fiscally penalize SFAs, this rule allows States to consider each unique situation and determine whether technical assistance, fiscal action, or a combination of both, is the appropriate response. FNS encourages State agencies to communicate with their SFAs about situations that would warrant fiscal action, to ensure a uniform and fair approach.

Accordingly, this final rule amends 7 CFR 210.18(l)(2) to give State agencies the discretion to take fiscal action against SFAs for repeated violations of milk type and vegetable subgroup requirements. This amendment aligns with State’s existing discretion to take fiscal action for repeated violations concerning food quantities, whole grain-rich foods, and the dietary specifications. This final rule retains the requirement that State agencies must take fiscal action for missing food components. The compliance date is September 22, 2023.

#### C. Reducing Performance-Based Reimbursement Reporting

Program regulations at 7 CFR 210.5(d)(2)(ii) require State agencies to submit to FNS a quarterly report detailing the total number of SFAs in the State and the names of SFAs that are certified to receive the statutorily-established 8-cents performance-based reimbursement. The regulations further affirm that State agencies will no longer be required to submit the quarterly report once all SFAs in the State have been certified. In the *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs*, 85 FR 4094, <https://www.fns.usda.gov/nslp/fr-012120>, FNS proposed reducing the frequency of this reporting requirement from quarterly to annually, as almost all SFAs are already certified to receive the performance-based reimbursement.

FNS received 21 comments on this proposal—20 were supportive and 1 was mixed. The mixed comment generally supported the provision but suggested a change to the rate structure which is statutorily driven. FNS agrees with respondents that eliminating or reducing non-essential administrative requirements and simplifying program regulations will allow more time for State agencies to focus on improving program operations.

Accordingly, this final rule amends 7 CFR 210.5(d) to reduce the performance-based reimbursement reporting requirement from quarterly to annually. This rulemaking moves the performance-based reimbursement report from the quarterly report under paragraph (d)(2) to the end-of-the-year report under paragraph (d)(3). Corresponding changes remove references to the performance-based reimbursement report at 7 CFR 210.7(d)(1)(vii) and (d)(2) that are now obsolete. This rulemaking amends 7 CFR 210.5(d)(2) and (d)(3) and 210.7(d). The compliance date is September 22, 2023.

#### IV. Miscellaneous Amendments

##### A. State Administrative Expense (SAE) Funds

SAE regulations require State agencies to return to FNS any unexpended SAE funds at the end of the fiscal year following the fiscal year for which the funds are awarded. FNS proposed an amendment that would require State agencies to return any unobligated SAE funds—instead of unexpended—to give State agencies more flexibility to spend their funds. FNS received 40 comments on this proposal—38 were supportive, 1 was opposed, and 1 was mixed. FNS agrees with respondents that making this change will help ensure that State agencies are not missing opportunities to use their funds. This change also gives State agencies a longer period of time to expend SAE funds to complete critical work. Accordingly, this final rule amends 7 CFR 235.5(d) and (e)(2) to require State agencies to return any unobligated SAE funds to FNS. The compliance date is September 22, 2023.

##### B. FNS Contact Information

A realignment of FNS Regional Offices took effect on September 29, 2019. These organizational changes achieve operational efficiencies, increased accountability, and improved communications to support program integrity, and ensure continued executive supervisory oversight for mission critical functions such as human resources, contracting, and logistics. This final rule makes a technical change to advise the public to contact the appropriate State agency or FNS Regional Office to obtain program information. Accordingly, this final rule amends 7 CFR 210.32, 215.17, 220.21, 225.19, and 226.26 to direct the public to the FNS website to obtain contact information. The effective date is September 22, 2023.

### C. Program Application Requirements

CACFP institutions must submit a certification, under 7 CFR 226.6(b)(1)(xv), that all information on the application is true and correct, along with the name, mailing address, and date of birth of the institution's executive director and board of directors chair or, in the case of a for-profit center, the owner of the for-profit center. Similar information about the executive director, board of directors chair, and other responsible principals must be included in each SFSP application. SFSP sponsors and CACFP institutions must also provide Federal Employer Identification Numbers (FEIN) or the Unique Entity Identifier (UEI). This final rule codifies these amendments under 7 CFR 225.6(c)(1), 226.6(b)(1)(xv), and 226.6(b)(2)(iii)(F). The effective date is September 22, 2023.

### V. Procedural Matters

#### Executive Orders 12866 and 13563

Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This final rule was reviewed by the Office of Management and Budget (OMB) and determined to be significant. As required, an economic summary was developed for this final rule.

#### Economic Summary

**Need for Action:** This action implements statutory requirements and policy improvements to strengthen administrative oversight and operational performance of the Child Nutrition Programs. Strong integrity safeguards for taxpayer investments in nutrition are fundamental to earning and keeping the public confidence that make these programs possible. As FNS continues to work towards improving integrity in these programs, this final rule establishes criteria and procedures through a number of provisions that are designed to increase accountability, maximize operational efficiency, and ensure that the National School Lunch Program, School Breakfast Program, Special Milk Program, Summer Food Service Program, and Child and Adult Care Food Program deliver important

nutritional benefits and protect scarce Federal resources with the highest level of integrity.

**Affected Parties:** The programs affected by this rule are the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), Child and Adult Care Food Program (CACFP), and the Summer Food Service Program (SFSP). The parties affected by this regulation are the USDA's Food and Nutrition Service, State agencies administering Child Nutrition programs, local school food authorities, schools, institutions, sponsoring organizations, sponsor sites, and day care centers.

**Summary:** A regulatory impact analysis (RIA) must be prepared for major rules with effects of \$200 million or more in any one year. USDA does not anticipate that this final rule is likely to have an economic impact of \$200 million or more in any one year, and therefore, does not meet the definition of "significant effects" under 3(f)(1) under Executive Order 12866, as amended.

USDA estimates the cost of this rule to State and local government agencies to be approximately \$0.7 million over 5 years, and for the cost to businesses (*i.e.*, CN program sponsors) to be \$6 million over 5 years, for a total 5-year nominal cost of \$6.7 million. At least some of those costs will be offset by new federal CACFP audit funding made available under this rule; USDA estimates the lower bound of these transfers from the federal government to the States to be \$27.2 million over 5 years and the upper bound to be \$108.9 million over 5 years. Due to these transfers, USDA anticipates that the net costs to the State and local parties will be lower than \$6.7 million over 5 years. All estimates in this economic summary are given in 2023 dollars.

**Baseline for analysis:** The baseline for this particular analysis is the administrative costs prior to the provisions' implementation on State agencies, SFAs, and CACFP sponsors for administering programs in compliance with Federal CN rules and statute, including reporting and recordkeeping costs. The cost estimates presented are the additional costs and transfer impacts above this baseline attributable to the provisions of this rule. Some of the rule's provisions have already been implemented and are simply codified through this rule. The cost impacts of provisions being codified are included with the total cost impacts of all provisions in this economic summary for transparency; those provisions are explicitly identified in the discussion below. The estimates and tables in this

analysis assume that all provisions will be in effect by 2025, so 2025 is used as the starting year for simplification and consistency in this economic summary.

**Summary of provisions from Child Nutrition Program Integrity Proposed rule factored into economic analysis:** This section states and summarizes the provisions considered in the Final Integrity rule carried over from the Child Nutrition Program Integrity Proposed rule, with a particular focus on the components with administrative cost implications.

- **Fines for Violating Program Requirements:** The CNI final rule authorizes the imposition of fines by the USDA and State agencies against school food authorities (SFAs) that have an agreement with a State agency to administer any of USDA's child nutrition programs. USDA and State agencies may impose fines against these institutions for failure to correct severe mismanagement of one of the CN programs, disregard of program requirements, and failure to correct repeated violations of program requirements. It also provides for the imposition of fines by the USDA against State agencies for failure to correct State or local mismanagement of a CN program, disregard of program requirements, or failure to correct repeated violations of program requirements. The rule sets limits on these fines and provides for the right to appeal fines imposed under this section.

- **State Agency Review Requirements in CACFP:** The final rule increases the minimum frequency of review, from once every three years to once every two, for certain CACFP institutions— independent centers or sponsoring organizations that have been identified as having or are at risk of having serious management problems, and sponsors of up to 100 facilities that conduct activities in addition to the CACFP (known as multi-purpose sponsors).

- **State Liability for Payments to Aggrieved Child Care Institutions:** The final rule sets reporting requirements for the administrative review process for CACFP sponsors or providers that face State agency administrative or fiscal actions and requires that State agencies issue administrative review decisions within 60 days, and permits USDA to make the State agency liable to pay all valid claims for reimbursement (meals and administrative) to the institution from non-Federal sources starting on the 61st day. This provision amends current regulations at 7 CFR 226.6(k).

- **CACFP Audit Funding:** Beginning in FY 2016, if a State agency demonstrated that it can effectively use additional funds to improve program

management in accordance with USDA criteria, USDA increased the funds made available to the State from 1.5 percent to 2 percent of the CACFP funds used by that State in the second preceding fiscal year. This provision is already in effect, and the final rule codifies this change in regulation.

- *Financial Review of Sponsoring Organizations in CACFP:* The final rule requires sponsoring organizations to report actual program expenditures, and it requires State agencies to annually review at least one month of all sponsoring organization's CACFP bank account activity against supporting documents to validate that all transactions meet program requirements. This provision amends current regulations at 7 CFR 226.7(b) and 7 CFR 226.10(c).

- *Informal Purchase Methods for CACFP:* This final rule amends 7 CFR 226.21(a) and 226.22(i)(1) to link the values of the Federal micro-purchase threshold and Federal simplified acquisition threshold to 2 CFR 200 (currently \$10,000 for micro-purchases and \$250,000 for the simplified acquisition threshold).

- *SFA Contracts with Food Service Management Companies:* This final rule amends NSLP regulations to require each State agency to annually review and approve each contract and contract amendment between any SFA and FSMC. (Currently, State agencies are required to review procurement contracts, but not to approve them formally.) It also amends NSLP and SBP regulations to require the value of USDA Foods to accrue only to the benefit of the SFA's nonprofit school food service. The proposed rule did not extend this second provision to SBP. However, FNS is correcting this oversight in this final rule by adding the USDA Foods provision to both NSLP and SBP regulations. Finally, the final rule adds a definition for fixed-price contract to NSLP and SBP regulations for clarity. Current NSLP and SBP regulations define cost-reimbursable contract. This provision amends current regulations at 7 CFR 210.19(a)(5).

- *Annual NSLP Procurement Training:* This provision requires that State directors of school nutrition programs, State directors of distributing agencies, and school nutrition program directors, management, and staff who work on NSLP procurement activities successfully complete annual training in procurement standards. It also requires State agencies and SFAs to retain records to document compliance with professional standards training requirements.

- *FNS Contact Information:* A realignment of FNS Regional Offices took effect on September 29, 2019. These organizational changes achieve operational efficiencies, increased accountability, and improved communications to support program integrity, and ensure continued executive supervisory oversight for mission critical functions such as human resources, contracting, and logistics. This final rule makes a technical change to advise the public to contact the appropriate State agency or FNS Regional Office to obtain program information.

- *Program Applications:* CACFP institutions must submit a certification, under 7 CFR 226.6(b)(1)(xv), that all information on the application is true and correct, along with the name, mailing address, and date of birth of the institution's executive director and board of directors chair or, in the case of a for-profit center, the owner of the for-profit center. Similar information about the executive director, board of directors chair, and other responsible principals must be included in each SFSP application. SFSP sponsors and CACFP institutions must also provide Federal Employer Identification Numbers (FEIN) or the Unique Entity Identifier (UEI).

*Summary of provisions from CACFP amendments factored into economic analysis:* This section states and summarizes the provisions in the Final Integrity rule carried over from the CACFP amendments Proposed rule.

- *Elimination of the Annual Application for Institutions:* This provision eliminates renewal applications and modifies the frequency with which initial and follow-up applications must be submitted by sponsoring organizations to state agencies. It also adds new definitions of New Institution, Participating Institution, Renewing Institution, and Lapse in Participation. Finally, the rule reorganizes applications submission and renewal requirements. This provision is already in effect.

- *Timing of Unannounced Reviews:* The timing of reviews conducted by sponsoring organizations will be required to vary and be unannounced, so they are unpredictable to sponsored facilities. The unannounced reviews from this provision are intended to uncover program integrity issues more effectively. This provision is already in effect.

- *Standard Agreements Between Sponsoring Organizations and Sponsored Child Care Centers:* This final rule requires State agencies to develop and provide for the use of

permanent operating agreements between sponsoring organizations of sponsored centers and day care homes. A standard agreement can be developed by State agencies to be used between sponsoring organizations and unaffiliated childcare centers. State agencies are also allowed to approve an agreement developed by the sponsoring organization. This provision is already in effect.

- *Collection and Transmission of Household Income Information:* The provision requires sponsoring organizations to allow providers of tier II day care homes to assist in the collection and transmission of household income information with the written consent of the parents or guardians of children in their care. It provides specific steps a day care home must take when assisting with this process. It also strongly encourages sponsoring organizations to establish procedures to protect the confidentiality of a household's income information and prohibits the provider from reviewing applications from households. This provision is already in effect.

- *Calculation of Administrative Funding for Sponsoring Organizations of Day Care Homes:* A modification was made to the method of calculating administrative payments to sponsoring organizations of day care homes by eliminating the "lesser of" cost and budget comparisons. FNS proposed calculating administrative reimbursement by multiplying the number of day care homes under the sponsoring organization's oversight by the appropriate annually adjusted administrative payment rate. This provision is already in effect.

- *Carryover of Administrative Funding for Sponsoring Organizations of Day Care Homes:* Under this provision, sponsoring organizations of day care homes can carry over and obligate up to 10 percent of administrative payments into the following year with State agency approval. The State agency is required to establish procedures to recover the funds from sponsoring organizations that are not properly payable, are in excess of the 10 percent maximum carryover amount, or any carryover amounts not expended or obligated by the end of the fiscal year following the year they were earned. This provision is already in effect.

*Summary of provisions from the Simplifying Monitoring in NSLP and SBP proposed rule:* The provisions listed below were carried over from the Simplifying Monitoring in NSLP and



SBP proposed rule into the Final Integrity Rule.

- *Discretion in Taking Fiscal Action for Meal Pattern Violations:* The final rule provision removes the requirement that State agencies must take fiscal action against SFAs for repeated violations of milk type and vegetable subgroup requirements. State agencies will instead have the discretion to take fiscal action, consistent with the guidance for food quantities, whole grain-rich foods, and dietary specifications. Waivers have been in place during the COVID-19 public health emergency to allow for State agency discretion for meal pattern violations.

- *Return to a 5-Year Review Cycle:* The final rule allows State agencies to return to a 5-year administrative review cycle and allows review of SFAs more frequently. The State agencies that review on a 3-year cycle are not required to designate high-risk or targeted reviews; however, high-risk designations and targeted reviews are required for State agencies that review SFAs on a longer than 3-year cycle. Each State agency that reviews SFAs on a longer than 3-year cycle must develop a plan for FNS approval describing the criteria that will be used to identify high-risk SFAs for targeted follow-up reviews. State Agencies must conduct targeted follow-up reviews of high-risk SFAs within two years of the review findings. This provision also changes the food service management company review from a 3-year to 5-year cycle, to align with the amendments to the administrative review cycle. This allows State agencies to review SFAs contracting with food service management companies more frequently, if they choose. Thirty-six State agencies had a waiver in place allowing reviews to be conducted on a 5-year review cycle prior to publication of the rule proposing this provision.

- *Framework for Integrity-focused Process Improvements:* The final rule proposes a framework for waiving or bypassing certain review requirements for State agencies or SFAs as an incentive to invest in one or more USDA-designated systems or process improvements that can reduce or eliminate Program errors. The series of optional process reforms will be published separately from the final rule.

- *Substitution of Third-Party Audits:* The final rule allows State agencies to use recent and applicable findings from the following audits in lieu of reviewing the same information on an administrative review, provided the audit activity complies with the same

standard and principals that govern the Federal single audit:

- Supplementary audit activities,
- Requirements added to federal or State audits by local operators,
- Other third-party audits initiated by SFAs, or
- Other third-party audits initiated by other local entities.

- *Completion of Review Requirements Outside of the Administrative Review:* State agencies may satisfy sections of the administrative review through equivalent State oversight activities that take place outside of the formal administrative review process, with required regional office approval.

- *Assessment of Resource Management Risk:* Under this provision, State agencies may conduct the assessment of an SFA's nonprofit school food service account at whichever point in the review process makes the most operational sense to the State agency. State agencies may also set up a review process and staff work units in the manner that they see fit.

- *Buy American Area of Review:* The requirement to review Buy American as part of the general areas of the administrative review are codified in the final rule and added to the regulatory definition of "general areas." Guidance on Buy American is provided currently.

- *Performance-based Reimbursement Quarterly Report:* The final rule changes the frequency of the reporting from quarterly to annual as most SFAs are already certified to receive the 6-cents performance-based reimbursement.

- *State Administrative Expense Funds:* This provision updates regulatory language to state that State agencies must return any State Administrative Expense funds which are unobligated. This is a change from the current requirement that unexpended funds must be returned.

*Addressing Public Comments on the Proposed 2016 CN Integrity Program Rule RIA:* The following list summarizes the comments on the proposed rule's Regulatory Impact Analysis:

- Five commenters discussed costs related to the Regulatory Impact Analysis (RIA) for the proposed CN Integrity Proposed Rule. A general advocacy group opposed many of the provisions in the proposed rule and expressed dissatisfaction that the original Congressional Budget Office analysis of Public Law 111-296 did not provide an estimate of the imposition of fines against entities other than State Agencies and SFAs. Although the dissatisfaction was not directed at the regulatory impact analysis of the proposed rule, USDA notes that the

final rule removes the provision authorizing fines against entities other than State Agencies and SFAs, so there will be no fines against entities other than State Agencies and SFAs. This is a change from the proposed rule, which would have extended fines to SFSP sponsors and CACFP institutions.

- An individual commenter also expressed concern about the additional administrative costs to the States of monitoring CACFP providers, which USDA estimated at \$4.3 million in FY2017 and \$22.7 million from FY2017-FY2021 in the RIA for the proposed rule. USDA presents updated estimates for FY2025-FY2029 for the final rule below, which results in a net decrease in cost and burden on State and local government agencies. Similarly, a State agency argued that State agencies would need more State funds (*i.e.*, non-federal funds) in order to comply with the "more frequent investigations and reporting" in the proposed rule. The State agency also recommended the creation of a national list of seriously deficient sponsors, rather than requiring each State to devise their own database reporting methodology and requiring each State to maintain the database itself. USDA also notes that the final rule makes available additional audit funding to State agencies that can justify a need for that funding.

- Finally, a State agency expressed concern about the ability of a State agency to pay any potential fines, as they do not have general funds available for this kind of liability, and any final ability to pay "will be severely hampered by the State's budgeting process."

- FNS was required by statute to codify the criteria and procedures under which FNS may establish fines against State agencies. In general, FNS expects fines to be established in *exceptional* circumstances, when existing processes (technical assistance, corrective action, and routine fiscal action) do not bring State agencies into compliance. FNS is *not required* to establish fines against State agencies, and fines would be limited to *severe or repeated* program violations that FNS, in consultation with its legal counsel, determines warrant a fine. Additionally, if an exceptional circumstance does warrant a fine, FNS may establish a fine below the maximum threshold established in regulation.

- There were no comments received on the RIA for the CACFP Amendments or the Simplifying Monitoring in NSLP and SBP proposed rules.

*Cost/Benefit Assessment Summary:* The analysis that follows quantifies the

impact of the four provisions of the above-listed provisions that we estimate have non-negligible cost implications for the Federal government, State agencies, SFAs, and/or businesses (including CACFP sponsors and centers), as well as the new reporting

and recordkeeping requirements of the final rule.

The analysis does not quantitatively estimate the value of the CNI final rule's benefits or the magnitude of most of its potential transfer impacts (such as the recovery of improper program payments) due to a lack of data, but we expect the overall economic effect to be

relatively small. The provisions codified in this final rule are designed to increase program operators' accountability and operational efficiency, while improving the ability of FNS and State agencies to address severe or repeated violations of program requirements.

TABLE 1—SUMMARY OF ESTIMABLE ADMINISTRATIVE COST DIFFERENCES AND RESOURCES

	Fiscal year (millions)					
	2025	2026	2027	2028	2029	Total
<b>State agency programmatic administrative costs</b>						
State Agency MIS Upgrade and Maintenance Costs .....	\$2.9	\$0.1	\$0.1	\$0.1	\$0.1	\$3.1
<b>State and Local Government Reporting and Recordkeeping Costs</b>						
State and Local Government Information collection burden (reporting and recordkeeping) .....	-0.4	-0.5	-0.5	-0.5	-0.5	-2.3
<b>Institutions (Business) administrative costs</b>						
Businesses—Reporting Requirements .....	1.1	1.2	1.2	1.2	1.3	6.0
<b>Increase in Federal audit funding for State agencies (CACFP)</b>						
low estimate .....	5.1	5.2	5.4	5.6	5.9	27.2
upper bound estimate .....	20.3	20.9	21.7	22.6	23.4	108.9

Note: Numbers may not sum to totals due to rounding.

*Administrative Impact:* This section begins with cost estimates for the four provisions expected to have the most significant effect on State agencies', local governments', and CACFP and SFSP providers' administrative responsibilities. We follow that with a qualitative discussion of the potential administrative impact of the rule's remaining provisions.

State Agency Review Requirements in CACFP: This provision is expected to be implemented by 2025. The CNI final rule increases the minimum frequency of review, from once every three years to once every two, for certain CACFP institutions— independent centers or sponsoring organizations that have been identified as having or are at risk of having serious management problems, and sponsors of up to 100 facilities that conduct activities in addition to the CACFP (known as multi-purpose sponsors). (Sponsoring organizations with more than 100 facilities already must be reviewed at least once every two years.)

The cost of this provision is included in the burden estimate under the Paperwork Reduction Act, so it is included in our estimate of the total reporting and recordkeeping costs for State and local government and for

businesses. It accounts for 6,728 of the increased burden hours, or 12.5% of the total increase in burden hours attributed to the rule as estimated in Table 10. At a rate of \$67.97, based on 2022 BLS State and Government Management and Professional compensation rates, this is an estimated annual cost of approximately \$457,302.

The administrative costs of this provision may vary across States with the relative concentration of small multi-purpose and other high-risk sponsors. In FY2022, FNS administrative data shows that there were 19,460 sponsors and independent centers, and a total of 140,434 centers and homes participating in CACFP. About 53 percent of CACFP providers are day care homes, and childcare centers account for about 46 percent of CACFP providers. At least for family day care homes, there is considerable variation in the distribution of homes per sponsor across the States (Table 2). For example, in November 2022, all sponsors of day care homes in New Hampshire oversaw 1 to 50 homes. Conversely, in Oregon, 67 percent of sponsoring organizations of day care homes oversaw 200 to 1,000 homes. Table 2 shows that 18 States report that more than half of their family day care

home sponsors administer between 1 and 50 homes.

Independent childcare centers made up 10.6% of all childcare providers in 2015 and are more likely to operate fewer than 10 sites. Among family day care home sponsors, 14.7 percent have 10 or fewer sites compared to 94.6 percent of childcare center and 75.4 percent of Head Start center sponsors. Conversely, 38.3 percent of family day care home sponsors have more than 100 sites compared to less than 0.2 percent of childcare centers and 0.1 percent of Head Start center sponsors. FNS data cannot distinguish multi-purpose sponsors from other sponsors that oversee no more than 100 daycare homes. FNS administrative data offer some indication that the administrative burden associated with this provision may vary across States. States with the highest percentage of small family day care home sponsors (those responsible for no more than 100 homes) may have a disproportionate number of small multi-purpose sponsors and may therefore be disproportionately impacted by this provision.<sup>1</sup>

<sup>1</sup> Source: FNS Administrative Data.

TABLE 2—PROFILE SPONSORING ORGANIZATIONS OF DAY CARE HOMES

States*	Percent of sponsoring organizations administering 1–50 day care homes		Percent of sponsoring organizations administering 51–200 day care homes		Percent of sponsoring organizations administering 201–1000 day care homes		Percent of sponsoring organizations administering 1000 + day care homes									
	1% to 25%	51% to 75%	1% to 25%	26% to 50%	1% to 25%	26% to 50%	1% to 25%	26% to 50%								
.....	10	16	8	10	9	22	9	5	16	9	2	1	3	0	0	0

November 2022

\* 52 States including DC and Puerto Rico.  
Source: FNS Administrative Data.

Financial Review of Sponsoring Organizations in CACFP: This provision amends current regulations at 7 CFR 226.7(b) and 7 CFR 226.10(c) and is expected to be implemented by 2025. The cost of this provision is included in the burden estimate as published in the ICR that accompanies this rule, so it is included in our estimate of the total reporting and recordkeeping costs for State and local government and for businesses in Table 10. The estimated burden associated with this provision is

6,638 hours annually, making up 12.4% of total increase in burden. At a rate of \$67.97, based on 2022 BLS State and Government Management and Professional compensation rates, this is an estimated annual cost of approximately \$451,185.

CACFP Audit Funding: Section 17(i) of the NSLA (42 U.S.C. 1766(i)) was amended by Section 335 of the Healthy, Hunger-Free Kids Act of 2010 (P.L. 111–296) to provide additional CACFP audit funding. This provision will codify the

already-implemented increase of the maximum amount of CACFP audit funding from 1.5 percent to 2 percent of CACFP expenditures. The provision took effect in FY 2016. Consistent with current program rules, audit funds are computed as a percent of CACFP spending in the second preceding year. Table 3 contains the Department’s actual value of CACFP audit distributions to the States in FY 2020, FY 2021, and FY 2022 for illustrative purposes.<sup>2</sup>

TABLE 3—FEDERAL TRANSFERS TO STATE AGENCIES FOR CACFP AUDIT FUNDING

CACFP projections	Fiscal year (millions)		
	2020	2021	2022
Maximum Available Audit Funding Projections from 2020 President’s Budget (1.5% + 0.5%)	\$70.1	\$71.8	\$58.4
1.5% Share Max Available .....	\$52.6	\$53.9	\$43.8
0.5% Share Max Available .....	\$17.5	\$18.0	\$14.6
Actual 1.5% funds used .....	\$52.0	\$53.6	\$43.4
Actual 0.5% funds used .....	\$4.3	\$4.9	\$6.2
Percent of available 0.5% funds used <sup>3</sup> .....	24.4%	27.5%	42.4%

If all State agencies request and demonstrate the need for additional funds under this provision, then projected extra FY 2025 CACFP funds would be calculated by multiplying CACFP expenditures by the full ½ percent, giving an increase in FY 2025 audit funding of \$20.3 million. We use the same methodology to estimate the upper bound estimate in Tables 1 and 4. Our upper bound estimate assumes that all State agencies will request and use the full ½ percent increase in audit funds.

In practice, additional audit funds are only made available to States that are able to justify a need for the funds. States are required to detail their plans for the use of additional funds in written requests to USDA. In FY 2018, 47.3% of these available funds were actually spent; in FY 2022, 42.4% of the available funds were actually spent.<sup>4</sup> Therefore, we may assume that, in most years, fewer than 100% of States Agencies will request 100% of the available 0.5% in additional audit funding. USDA estimates an additional

four burden hours per State that chooses to submit a plan and request for additional funding, as outlined in the ICR and our estimate of the administrative burden below.

To account for the additional reviews required by this final rule, we estimate the costs of increasing CACFP audit funding in Table 4. We establish our lower bound estimate at 25% of the maximum additional audit funding available.

TABLE 4—COST OF INCREASE IN STATE AUDIT FUNDING IN CACFP

	Fiscal year (millions)					
	2025	2026	2027	2028	2029	Total
<b>Increase in Federal audit funding (CACFP)</b>						
Lower estimate (25% of available funding) .....	\$5.1	\$5.2	\$5.4	\$5.6	\$5.9	\$27.2
Upper bound (100% of available funding) .....	20.3	20.9	21.7	22.6	23.4	108.9

*Administrative Review Cycle:* The transition from a 5-year cycle to a 3-year cycle for the administrative review process resulted in some State agencies and SFAs struggling to complete reviews and oversight activities. This provision is expected to be implemented in all States agencies by 2025. Thirty-six State agencies had a waiver in place allowing reviews to be conducted on a 5-year review cycle

prior to publication of the rule proposing this provision. USDA has received feedback through several avenues regarding the difficulties faced by State agencies. The Child Nutrition Burden Study was conducted in SY 2017–2018 in response to a Congressional mandate in House Report 114–531 to identify areas to reduce burden in the Child Nutrition Programs. This study collected data through

workgroups with State and local Program operators, as well as a survey from a census of all State agencies and a nationally representative sample of SFAs. One reoccurring theme in this study, from both the State agency and SFA perspectives, was the burden associated with the 3-year administrative review cycle. To comply with the 3-year administrative review requirements, some State agencies and

<sup>2</sup> Figures used in these actuals and in the FY2025–FY2029 projections were prepared for the FY 2024 President’s Budget.

<sup>3</sup> The years most affected by the COVID–19 pandemic (2019–2021) resulted in a lower percent

of available 0.5% funds used compared to other years.

<sup>4</sup> USDA administrative data.

SFAs were sacrificing staff resources needed for program administration, including providing technical assistance. State agencies face a number of time and resource constraints, and Program operators struggled to adopt the new procedures and timeframes.

It is important to assess the impact of returning to a 5-year cycle. Fewer SFAs would be reviewed each year, resulting in the potential for program error to continue for longer. Table 5 shows the projected number of annual reviews that would be conducted using a 5-year

cycle and the number of annual reviews that would be conducted using a 3-year cycle. It also provides the number of actual reviews conducted in SY 2018–2019.

TABLE 5—NUMBER OF ANNUAL REVIEWS CONDUCTED

Total number of SFAs in SY 2018–19	Number of SFAS reviewed during 5-year cycle	Number of SFAS reviewed during 3-year cycle	Number of SFAs reviewed SY 2018–19
18,925 .....	3,785	6,308	5,972

To better understand the impact of the proposed follow-up review for the designated high-risk SFAs, the data from the SY 2018–2019 review year was analyzed to estimate the potential number of follow-up reviews that may have been conducted, if the proposed follow-up reviews were implemented. The criteria used in this simulation only focuses on the results of the administrative reviews and does not account for other important criteria that the State agency may identify or items that may be identified through public comments. To estimate the potential number of follow-up reviews, FNS forms 640A and 640B were analyzed to

group reviewed SFAs by the number of error flags triggered during administrative reviews in SY 2018–2019. The methodology of this flag count analysis has been updated since the 2020 proposed rule to reduce the margin of error in the flag counts for SY 2018–19 data.

Forms 640A and 640B document administrative review findings, including types of errors found during the review. For this analysis, a flag was assigned to unique SFAs per type of error, not for every error found (Table 6). SFAs with any application errors (for example missing child or household name or income information) were

assigned an error flag for applications, the same process was done for SFAs with certification benefit issuance errors (for example, during a review, a sampled student was approved for free meals but was not eligible). SFAs with a fiscal action amount that was not disregarded were assigned a fiscal action error flag. SFAs were also assigned an error flag if they triggered the risk flag for the resource management errors (nonprofit school food service account, Paid Lunch Equity, revenue from nonprogram foods, and indirect costs) or served meals missing components.

TABLE 6—NUMBER OF SFAS BY ERROR FLAG  
[SY 2018–19 Reviews]

Total SFAs reviewed	No error flags	Application error flags	Certification benefit error flag	Fiscal action taken flag	Resource management flag	Incomplete meal error flag
5,972 .....	1,289	869	874	411	3,845	663

TABLE 7—NUMBER OF SFAS BY ERROR FLAGSY 2018–19 REVIEWS

Number of error flags	Count of SFAs	Percent of SFAs reviewed by number of flags (percent)
0 .....	1,289	21.6
1 .....	3,241	54.3
2 .....	1,002	16.8
3 .....	354	5.9
4 .....	76	1.3
5 .....	10	0.2

The number of SFAs by type of error flag is presented in Table 6. Similarly, the number of SFAs reviewed by total

number of error flags is in Table 7. It is important to note this analysis does not consider the magnitude of a particular

error, just the presence of an error found during an administrative review.

TABLE 8—ANNUAL AND 5-YEAR COST DIFFERENCE OF OPTIONAL 5-YEAR ADMINISTRATIVE REVIEW CYCLE & TARGETED, FOLLOW-UP REVIEWS FOR HIGH-RISK SFAS

Fiscal year (millions)					
2025	2026	2027	2028	2029	Total
-\$3.3	-\$3.4	-\$3.5	-\$3.6	-\$3.7	-\$17.4

Based on the projected number of reviews in a 5-year cycle compared to a 3-year cycle (Table 5), there would be about 2,244 fewer annual reviews conducted under this proposed change assuming about 7 percent of SFAs with 3 or more flags require follow-up review (Table 7). This reduction in reviews leaves the potential for issues to continue for additional years. However, the targeted nature of the follow-up review, in both selection and scope, would aim to redirect resources to fixing program issues and providing the necessary technical assistance that is currently difficult to do for some resource-strapped States under the current 3-year cycle.

This final rule also amends NSLP regulations to change frequency of food service management company review from 3-year to 5-year cycle, in alignment with the changes to the administrative review cycle. State agencies would still be allowed to review SFAs contracting with food service management companies more frequently if they choose.

An overall decrease in burden hours (-42,760 hours) is expected for moving from a 3-year to a 5-year review cycle. The targeted nature of the follow-up reviews are intended to be more directly focused on noncompliance and high-risk areas and therefore be less burdensome than the initial review. This aids in streamlining the review procedures while balancing the need to quickly resolve program errors and the importance of addressing noncompliance in high-risk SFAs. This is intended to help State and local operators focus resources on technical assistance and technology to improve Program operations.

These changes are anticipated to save \$17.4 million over 5 years, calculated by multiplying the total burden hour reduction over 5 years by projected 2025–2029 management and professional wages according to BLS.<sup>5</sup>

<sup>5</sup> Based on reported wage rate for State and local government sector management, professional, and related workers from the Bureau of Labor Statistics' "Table 3. State and local government workers by occupational and industry group" database (<https://www.bls.gov/news.release/eccec.t03.htm>). For FY 2022 (September), the total compensation per hour for these positions averaged \$67.96 per hour. We

The savings shown in Table 8 isolates the cost impact specific to this provision and are factored into total reporting and recordkeeping cost impacts in Table 10. The change in estimate from the 2020 proposed rule is largely due to the change in reporting and recordkeeping burden estimates (from -171,330 hours) according to the NSLP ICR, along with state and local government occupation wage increases over recent years.

*Fines for Violating CN Program Requirements:* This provision is expected to be in effect by 2025. FNS stresses that the statutory authority conferred on State administering agencies to impose fines on SFAs will be used rarely and only against egregious and repeat violators of program rules. For example, fines may be warranted to address a serious violation, such as the deliberate destruction of records or the deliberate misappropriation of program funds. Fines would not be warranted for routine problems, such as a menu planning or meal pattern violation or a recordkeeping or resource management error, which can be corrected with State agency oversight and technical assistance.

A fine would never replace established technical assistance, corrective action, or fiscal action measures to solve commonplace or unintentional problems. Rather, the assessment of fines provides a new accountability tool for FNS and State agencies to use when there are severe or repeated non-criminal violations—the types of programs abuses that seriously threaten the integrity of Federal funds or significantly impair the delivery of service to eligible students. Each situation is different, and FNS and State agencies, in consultation with their legal counsel, will carefully consider whether a fine is the appropriate response. USDA expects that the risk of more substantial financial penalties will further reduce the already low incidence of severe or repeated violations, making the need to exercise the authority under the rule

inflate this figure through FY 2029 with projected growth in the State and Local Expenditure Index prepared by OMB for use in the FY 2024 President's Budget.

unnecessary, except in extreme circumstances.

Similarly, we do not expect this statutory authority to result in substantial fines by USDA against State agencies. The authority to impose fines against State agencies places additional pressure on those agencies to reduce the incidence of severe mismanagement and repeat violations of program rules at the provider and sponsor levels. The expected effect of this authority is increased vigilance by State administrators against exceptional mismanagement at the provider and sponsor levels.

*State Liability for Payments to Aggrieved Child Care Institutions:* This provision is expected to be in effect by 2025. The data collected in the 2010 and the 2011 Targeted Management Evaluations (TMEs), an instrument used by USDA to monitor State agency compliance with CACFP regulation, provides some of the measures used in estimating the impact of this provision. Twenty-one States<sup>6</sup> reported the average number of days elapsed between the State agency's receipt of an institution's request for a hearing and the date of the hearing official's decision on their 2010 and 2011 TMEs. Ten percent of those States reported no requests for hearings; 33 percent reported averages of 60 days or less; 19 percent reported averages between 61 and 90 days; and 38 percent reported averages over 91 days. This data show that in the absence of a financial penalty, 43 percent of the States reporting information either had no appeals or provided a determination within the 60-day timeframe.

We expect that increased monitoring by FNS and a shift in the responsibility for program payments to the States will encourage the States to resolve administrative reviews within the established regulatory timeframe of 60 days. Although the provision is intended to speed the processing of administrative reviews, it is not intended or expected to add significantly to the States' cost of

<sup>6</sup> Twenty-one States reported information about ten of their appeals of a Notice of Proposed Termination during the 2010 and the 2011 Targeted Management Evaluations (TMEs). More recent data on delay times are not available.

handling those reviews. Procurement Training Requirement for State Agency and SFA Staff: The CNI final rule requires State directors of school nutrition programs, State directors of distributing agencies, and school nutrition program directors, management, and staff who work on NSLP procurement activities to successfully complete procurement training annually. The required training would cover the procurement topics specified in subsection 210.21(h).

FNS expects that State Agencies and SFAs will integrate this training requirement into their current training curriculums required under the Professional Standards Rule,<sup>7</sup> with no additional annual training hours required on average. Furthermore, the final rule preamble notes that State agencies may use SAE funds to pay for the costs of receiving or delivering annual NSLP procurement training. This is expected to be implemented by 2025.

*Performance-based Reimbursement Quarterly Report:* This proposed change would reduce, from quarterly to annually, the frequency of a State Agency report on the status of SFAs certified for the performance-based reimbursement. As of February 2019, 99 percent of SFAs are certified to receive the performance-based reimbursement. This change responds to feedback from the *Child Nutrition Program Reducing Burden Study*; State agencies requested USDA to review the reporting requirements and determine areas to streamline reporting. USDA currently receives a count of the monthly number of lunches receiving the performance-based reimbursement on the Report of School Meal Operations (form FNS-10) from States.

The reduced frequency of the quarterly certification report aims to enable State and local Program operators to direct resources to maintain effective and efficient program operations while still providing USDA the necessary information on SFA certification. Along with the monthly FNS-10 reporting, the annual update will be sufficient for USDA to track the status of SFA certification. This change slightly decreases the burden hours associated with moving the frequency of reporting from quarterly to annually. This is a small reduction of 42 annual burden hours, which is about \$3,000 annually. This is expected to be implemented by 2025.

*Standard Agreements Between Sponsoring Organizations and Sponsored Centers:* This provision is already in effect. The State Agency must develop/revise and provide a sponsoring organization agreement between sponsor and facilities, which must have standard provisions. Sponsoring organizations must enter into permanent agreements with their unaffiliated centers and annually provide State agencies with bank account activity against other associated records to verify that the transactions meet program requirements. FNS estimates that there are 18,601 sponsoring organizations that are businesses, each of which will submit 1 month's bank statement to their State agency.

The terms of the standard agreement adds requirements of centers to allow visits by sponsoring organizations or State Agencies to review meal service and records, promptly inform sponsors about any change in licensing or approval status, meet any State agency approved time limit for submissions of meal records, and distribute to parents a copy of the sponsoring organization's notice to parents if directed by the sponsor. This provision contributes 5,646 additional burden hours that are accounted for in the projected reporting and recordkeeping costs (Table 10).

*Elimination of the Annual Application for Institutions:* This provision has already been implemented. This final rule codified elimination of the requirement for renewing institutions to submit an annual application for renewal; however, these institutions must demonstrate that they are capable of operating the Program in accordance with this part as set forth in § 226.6b(b) by reviewing annual certification of an institution's eligibility to continue participating in CACFP (replaces the renewal application process). Therefore, a total of 3,005 burden hours associated with the renewing institutions to submit an annual application has been removed because of this rule. This difference is included in Table 10.

*Collection and Transmission of Household Income Information:* This provision is already in effect. This final rule codifies the right of tier II day care homes to assist in collecting meal benefit forms from households and transmitting the forms to the sponsoring organization on the household's behalf. If a tier II day care home elects to assist in collecting and transmitting the applications to the sponsoring organization, sponsoring organizations must establish procedures to ensure the provider does not review or alter the

application. The burden associated with this is 5,199 hours, which are accounted for in the projected reporting and recordkeeping costs in Table 10. This provision has been a standard operating practice for sponsoring organizations of day care homes since 2011.

*Carryover of Administrative Funding for Sponsoring Organizations of Day Care Homes:* This provision is already in effect. The final rule codifies allowing sponsoring organizations of day care homes to carry over up to 10 percent of unspent administrative reimbursement from the current federal fiscal year to the next fiscal year. The sponsoring organizations of day care homes seeking to carry over administrative funds must submit an amended budget, to include an estimate of requested administrative fund carryover amounts and a description of proposed purpose for which those funds would be obligated or expended.

The State agency must review the budget and supporting documentation prior to approval, for sponsoring organizations of day care homes seeking to carry over administrative funds. The State agency must establish procedures to recover administrative funds from sponsoring organizations of day care homes that are not properly payable under FNS Instruction 796-2, administrative funds that are in excess of the 10 percent maximum carryover amount, and carryover amounts that are not expended or obligated by the end of the fiscal year following the fiscal year in which they were received. This provision is codifying standard operating practice. The burden associated with this is 1,462 hours, which are accounted for in the projected reporting and recordkeeping costs in Table 10.

*Remaining Provisions:* The CNI final rule's remaining provisions are expected to have only modest impacts on State agency or sponsor administrative costs. State agency and sponsor responsibilities under these provisions are limited largely but not entirely to improved documentation.

The following provisions will likely have no costs or negligible cost impacts:

*1. Varied Timing of Reviews Conducted by CACFP Sponsoring Organizations*

(a) Program impact: Reviews are more effective at ensuring program integrity when they are unannounced and unpredictable. Sponsoring organizations are already required to conduct two unannounced reviews out of 3 reviews per year in a manner that makes the reviews unpredictable to sponsored facilities. One of the unannounced reviews must include observation of a

<sup>7</sup> "Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010," *Federal Register* Vol 80, No. 40 (March 2, 2015), p. 11077-11096.



meal service. This provision requires the timing of the mandatory unannounced reviews and type of meal serviced reviewed to vary and is already in effect.

(b) *Cost Impact:* We estimate no change in cost associated with this provision. This change merely requires sponsors to vary the timing of unannounced reviews but does not impact the frequency. This provision has also been a standard operating practice for sponsoring organizations and State agencies since 2011.

#### 2. *Fiscal Action for Meal Pattern Violations*

(a) *Program impact:* This provision gives State agencies the discretion to take fiscal action against SFAs for repeated violations of milk type and vegetable subgroup requirements, instead of requiring fiscal action. This amendment aligns with State's existing discretion to take fiscal action for repeated violations concerning food quantities, whole grain-rich foods, and the dietary specifications.

(b) *Cost Impact:* We estimate no change in cost associated with this provision. Fiscal action will be at the discretion of the State agencies, instead of required. Waivers have been in place during the COVID-19 public health emergency to allow for State agency discretion for meal pattern violations, and we expect this provision to be fully implemented by 2025.

#### 3. *NSLP Resource Management Module*

(a) *Program impact:* Flexibility and discretion is allowed to State agencies in this provision. FNS will no longer require that this assessment take place off-site before the administrative review. Although the State agency should make this assessment in the school year that the review began, completion of the resource management module may occur before, during, or after the on-site portion of the administrative review.

(b) *Cost Impact:* We estimate no change in cost associated with this provision. This does not change frequency or burden of conducting assessment of SFA's nonprofit school food service account. This provision merely allows State agencies to complete the assessment of an SFA's nonprofit school food service account and to conduct the resource management module at any point in the review process.

#### 4. *Buy American Review*

(a) *Program impact:* Program regulations under 7 CFR 210.21(d) and 7 CFR 220.16(d) describe requirements SFAs to purchase, to the maximum extent practicable, domestic commodities or products, and State

agencies already review this provision as a part of the administrative review. However, Buy American is not currently included in regulation as part of the general areas of the administrative review. FNS proposed including compliance with the Buy American requirements as a general area of review, under 7 CFR 210.18(h)(2), that State agencies must monitor when they conduct administrative reviews.

(b) *Cost Impact:* We estimate no change in cost associated with this provision. Existing Guidance is codified and modifies the technical definition of "General Areas" in this provision with no practical change in current program operations.

#### 5. *State Administrative Expense Funds*

(a) *Program impact:* This amendment updated regulatory language that would require State agencies to return any unobligated SAE funds—instead of unexpended—to give State agencies more flexibility to spend their funds.

(b) *Cost Impact:* We estimate a negligible change in cost associated with this provision by 2025. The regulatory language increases flexibility of State agencies to utilize their SAE funds but is not expected to have measurable impacts on the amount of funds returned. Between 2018 and 2021 unobligated SAE funds ranged from approximately 1 to 3 percent.

#### 6. *Administrative Payment Rates to Sponsoring Organizations for Day Care Homes*

(a) *Program impact:* This rule amends 7 CFR 226.12(a) to simplify the calculation of monthly administrative reimbursement that sponsoring organizations of day care homes are eligible to receive. To determine the amount of payment, the State agency must multiply the appropriate administrative reimbursement rate, which is announced annually in the **Federal Register**, by the number of day care homes submitting claims for reimbursement during the month. This provision has been a standard operating practice for State agencies since 2010.

(b) *Cost Impact:* Existing practice is codified. We estimate a negligible cost (104 hours) of this provision that is accounted for in projected reporting and recordkeeping costs (Table 10).

The following are provisions that may have minor, non-quantifiable administrative impacts:

##### (1) *NSLP Integrity-focused Process improvements*

(a) *Program impact:* The administrative review process is an integral part of program integrity but is burdensome to State agency staff and resources. Impacts of this rule include

FNS seeking out input to develop a series of optional process reforms. The process improvements would give State agencies more flexibility to satisfy parts of the administrative review and reduce or eliminate human errors. State agencies will require FNS approval of process reforms.

(b) *Cost Impact:* This provision may incur minor potential future costs that are not quantifiable at the time of this rule, but USDA does not expect these costs to be material.

##### (2) *NSLP Third-party Audits*

(a) *Program impact:* With FNS approval, third party audits may be used in lieu of reviewing the same information on an administrative review. This will give State agencies more flexibility to satisfy parts of the administrative review and limit needless duplication through activities they already perform if the audit activity complies with the same standard that govern the federal single audit.

(b) *Cost Impact:* The variation in what is used to satisfy parts of an administrative review is too wide to be able to quantify.

##### (3) *Completion of Review Requirements Outside of the Administrative Review*

(a) *Program impact:* With FNS and regional office approval, State agencies are allowed to satisfy sections of the administrative review through equivalent State oversight activities that take place outside of the formal administrative review process. This gives State agencies more flexibility and limits redundancies to satisfy parts of the administrative review through activities they already perform.

(b) *Cost Impact:* This provision will have minimal administrative savings that are not quantified.

*Management Information System (MIS) Upgrade Costs:* FNS expects that SAs, SFAs, SFSP and CACFP program operators will be able to implement the vast majority of the provisions of the rule with no changes to their current management information systems (MIS) or information technology (IT) infrastructure.

However, FNS acknowledges that this will not be universally true, and that some SAs, SFAs, SFSP, and/or CACFP program operators may incur some one-time and/or ongoing IT costs to be able to implement the required provisions of the rule. In most cases, FNS expects these additional IT costs to be marginal or minimal, and that most or all of the additional costs to SAs, SFAs, SFSP, and CACFP program operators will be administrative, as estimated elsewhere in this document.

Two of the final rule’s requirements—that CACFP administering SAs must annually review at least one month’s bank account activity of all sponsoring organizations against documents adequate to support that the financial transactions meet Program requirements, and that CACFP administering SA’s must annually review actual expenditures reported of Program funds and the amount of meal reimbursement funds retained from unaffiliated centers to support the sponsoring organization’s administrative costs—have the potential to incur larger costs to the respective SAs, as these provisions may require those SAs to integrate new functions into their MIS.

FNS does not have information specifically on the cost to SAs to make changes to their CACFP MIS, but an internal FNS data collection from all NSLP/SBP SAs on the 2016–2017 school year provides some information on MIS costs to SAs running NSLP/SBP, and this is the best proxy we have available for potential costs for a CACFP MIS. This data collection found that only a couple of complex modules

(menu planning and direct certification/matching) tend to cost more than \$500,000 to develop, while less complex modules (e.g., federal reporting, nutrient analysis, financial management for SFAs, and professional standards training) tend to cost less than \$100,000. We assume that the requirements of this rule are of the less complex nature.

Similarly, upgrade costs for NSLP/SBP SA modules tended to be greater for more complex modules, and less for less complex modules. However, between 20% and 50% of SAs reported no direct costs to the SA when upgrading modules, so some SAs may be able to absorb these functions into their existing MIS maintenance with no additional costs beyond costs already budgeted for planned maintenance.

Given this wide variation in MIS development and maintenance costs, FNS is providing both a point estimate and range for possible costs for MIS upgrades required to implement the provisions of the CNI final rule. The lower-bound estimate of MIS costs is \$0 per SA, if SAs are able to absorb these functions into their MIS as part of their existing MIS modules and/or maintenance schedule.

At the upper-bound, it is possible that a SA may have to develop a new module for reviewing bank account activity and may have to upgrade their existing module for reviewing sponsors’ expenditures. If we assume that the new module costs \$100,000, and upgrading an existing module costs \$50,000, then our initial upper-bound estimate would be \$150,000 per SA for initial development/upgrade costs. Average annual maintenance fees for NSLP/SBP SA MIS are approximately \$225,000 per year; if we assign 5% of these costs to the new rule, then we have an average annual maintenance cost of \$11,250 per SA that we assign to this final rule.

For an intermediate point estimate (which we present as our primary estimate), FNS expects that SAs will be able to implement the requirements of this rule with a single upgrade to an existing module. FNS assumes the cost of this upgrade will be \$50,000 per SA, and the annual maintenance cost of this upgrade will be an additional \$1,000 per SA above SAs’ baseline MIS maintenance costs. Table 9 presents 5-year estimates of the cost ranges (including inflation).

TABLE 9—MIS UPGRADE COSTS TO CACFP ADMINISTERING SAs

	Fiscal year (millions)					
	2025	2026	2027	2028	2029	Total
Primary Estimate .....	\$2.9	\$0.1	\$0.1	\$0.1	\$0.1	\$3.1
Lower-Bound Estimate .....	0.0	0.0	0.0	0.0	0.0	0.0
Upper-Bound Estimate .....	9.1	0.7	0.7	0.7	0.6	11.6

However, establishing and maintaining information systems required for the management of Child Nutrition Programs is an allowable cost covered by SAE funds. In addition, once all CACFP audits are funded, CACFP audit funds may be used for systems improvements reasonably connected to monitoring, oversight, and maintaining the operational integrity for the CACFP. Therefore, SAs may use these funds to cover costs to update their State systems as a result of changes in Program requirements due to this final rule. If SAs apply for and receive additional audit funding to make the MIS upgrades and maintenance necessary for these provisions, the net MIS cost to SAs because of this final rule could be \$0, depending on the cost of the upgrades and the availability of additional audit funding. Furthermore, USDA regularly

<sup>8</sup>Based on reported wage rate for State and local government sector management, professional, and related workers from the Bureau of Labor Statistics’ “Table 3. State and local government workers by

makes available a variety of competitive grants that could further defray these potential cost increases for SAs (e.g., Administrative Review and Training Grants and Technology Innovation Grants).

*Access Impacts—General:* Several of the CNI final rule’s provisions restrict participation by service providers, sponsoring organizations, or administering officials in USDA’s child nutrition programs who violate program rules or have otherwise been determined to be risks to program integrity.

*State Agency Reporting and Recordkeeping:* As noted above, several of the provisions in the CNI final rule increase the information collection burden on State and local government agencies and on businesses (i.e., CACFP sponsors and providers). In total, the Department estimates that State and

occupational and industry group” database (<https://www.bls.gov/news.release/ecec.t03.htm>). For FY 2022 (September), the total compensation per hour for these positions averaged \$67.96 per hour. We

local government agencies will spend an additional 3,869 hours complying with the rule’s reporting requirements each year, and an additional 4,297 hours on recordkeeping. Businesses will spend about an additional 13,399 hours complying with the rule’s reporting requirements. The total increase in burden hours is estimated to be 7,536 hours per year. These estimates, prepared in satisfaction of the requirements of the Paperwork Reduction Act of 1995, are summarized in the preamble to the rule.

We estimate the State agency cost of complying with the CNI final rule’s information collection requirements by applying an average wage for State and local government professional employees to these additional reporting and recordkeeping hours.<sup>8</sup> These costs are summarized by program in Table 10.

inflate this figure through FY 2029 with projected growth in the State and Local Expenditure Index prepared by OMB for use in the FY 2024 President’s Budget.

TABLE 10—PROJECTED REPORTING AND RECORDKEEPING COST DIFFERENCES

	Fiscal year (millions)					
	2025	2026	2027	2028	2029	Total
<b>NSLP:</b>						
State and Local Government—Recordkeeping * .....	\$0.17	\$0.18	\$0.18	\$0.19	\$0.20	\$0.92
State and Local Government—Reporting * .....	–\$1.36	–\$1.40	–\$1.44	–\$1.49	–\$1.54	–\$7.23
Total .....	–1.18	–1.22	–1.26	–1.30	–1.34	–6.31
<b>CACFP:</b>						
State and Local Government—Recordkeeping * .....	0.19	0.19	0.20	0.21	0.21	1.00
State and Local Government—Reporting * .....	0.55	0.57	0.59	0.60	0.62	2.93
Businesses—Reporting * .....	1.12	1.16	1.20	1.24	1.28	6.00
Total .....	1.86	1.92	1.98	2.05	2.11	9.93
<b>SFSP:</b>						
State and Local Government—Recordkeeping * .....	(*)	(*)	(*)	(*)	(*)	(*)
State and Local Government—Reporting * .....	(*)	(*)	(*)	(*)	(*)	0.04
Total .....	(*)	(*)	(*)	(*)	(*)	0.04
<b>Total Difference for Final Rule .....</b>	<b>0.69</b>	<b>0.71</b>	<b>0.73</b>	<b>0.75</b>	<b>0.78</b>	<b>3.65</b>

\* Estimated at less than \$10,000.

**Note:** Sums may not match due to rounding or to the addition of sums below \$10,000 to totals.

*Benefits:* The provisions codified in the CNI final rule are designed to increase program operators’ accountability and operational efficiency, while improving the ability of FNS and State agencies to address severe or repeated violations of program requirements. The final rule’s provisions add new requirements to existing reviews of child nutrition program sponsors, subject additional sponsors to periodic review, and increase USDA and State agency authority to fine seriously deficient sponsors and prohibit their participation in CN programs.

We note the following specific benefits of particular provisions of the final rule:

- *Extending the administrative review cycle:* This maximizes operational efficiency by relieving time and resources for State Agency staff to focus reviews on SFAs at risk of integrity issues instead of on SFAs without management issues. State agency and SFA cooperation with one another to administer school meal programs is central to ensure the delivery of nutritional food to school children. The Federal funding that supports school meal programs (NSLP and SBP) is to be used and protected with the highest level of integrity by State agencies and SFAs. While the administrative review enforces accountability of these Federal resources, extending to a 5-year review allows State agencies to perform reviews more effectively, allocate more time and resources towards school meal program

administration, technical assistance, and program improvement.

- *Implementation of fines, referred to as assessments in the proposed rule:*

This provision provides a new accountability tool for FNS and State agencies to use when there are severe or repeated non-criminal violations—the types of programs abuses that seriously threaten the integrity of Federal funds or significantly impair the delivery of service to eligible students.

- *More frequent reviews of childcare institutions and adult care institutions that are at risk of having serious management problems:* This will focus additional resources on those providers who are at greatest risk of intentionally or unintentionally violating program requirements. State agencies are invited to propose alternative approaches for determining review priorities in consultation with the FNS Regional Offices.

- *Additional State agency funding for audits of childcare institutions and adult care institutions:* This provision provides States with additional resources to audit CACFP providers to ensure program integrity and remedy potential wrongdoing. FNS continues to encourage all State agencies to make wider use of SAE along with the additional CACFP audit funds to help ease any burden.

- *Increased financial oversight of sponsoring organizations’ bank account activity and reporting requirements:* An OIG audit<sup>9</sup> found that reviewing bank

activity (in addition to reviewing budgets) would be effective at uncovering and preventing misuse of funds in a cost-effective manner.

- *Option to carry over unspent federal reimbursement into the new fiscal year:* This provides State agencies the flexibility to rollover up to 10 percent of unspent reimbursement from the previous fiscal year into the following fiscal year.

- *Fiscal action discretion:* This provision provides State agencies with more discretion on when to apply fiscal action for meal pattern violations during an administrative review in the School Meals programs. The requirement that State agencies must take fiscal action against SFAs for repeated violations of milk type and vegetable subgroup violations is removed, allowing states to provide assistance and support instead. Removing the fiscal action requirement increases operational efficiency for State agency staff. States are now only required to take fiscal action for a missing component violation, which is in alignment with the DGA rule.

We are not able to quantify potential nutritional benefits stemming from increased accountability and operational efficiency, nor can we quantify the dollar effects of the actions and transfers listed above, as we do not know the rates or magnitudes of error in the population. Many of the changes are already in effect and the variation in implementation makes it difficult to know the percentage of errors that will

<sup>9</sup> *Review of Management Controls for the Child and Adult Care Food Program*, available online at

<https://www.usda.gov/oig/webdocs/27601-0012-SF.pdf>.

be avoided or rectified due to the implementation of these provisions.

*Accounting Statement:* As required by OMB Circular A-4, available at [https://www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/circulars/A4/a-4.pdf](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf), we have prepared an accounting statement summarizing the annualized estimates of benefits, costs and transfers associated with the provisions of this rule.

The benefits of the CNI final rule include increasing program operators'

accountability and operational efficiency, while improving the ability of FNS and State agencies to address severe or repeated violations of program requirements. Monetary benefits are not quantified in this analysis.

The costs associated with provisions of the final rule are incurred primarily by State agencies, program sponsors, and SFAs. These include the following, only some of which are quantified in Table 11 below:

- The costs of conducting additional CACFP sponsor reviews and
- The cost of reviewing CACFP sponsor bank account statements and expenditure reports of unaffiliated sponsored centers.

Transfers include distribution of new CACFP audit funds from the USDA to State agencies (which has been quantified), and the return of (or reduction in) misappropriated program funds and improper payments (which has not been quantified).

TABLE 11—UNDISCOUNTED STREAM OF QUANTIFIABLE COSTS AND TRANSFERS

	Fiscal year (millions)					
	2025	2026	2027	2028	2029	Total
Nominal cost stream to States .....	\$2.4	-\$0.4	-\$0.4	-\$0.4	-\$0.4	\$0.7
Nominal cost stream to Businesses .....	1.1	1.2	1.2	1.2	1.3	6.0
Nominal transfer stream:						
low estimate .....	5.1	5.2	5.4	5.6	5.9	27.2
high estimate .....	20.3	20.9	21.7	22.6	23.4	108.9

Applying 3 percent and 7 percent real discount rates to these nominal streams gives present values (in 2023 dollars):<sup>10</sup>

TABLE 12—DISCOUNTED COSTS AND TRANSFERS

	Fiscal year (millions)					
	2025	2026	2027	2028	2029	Total
Discounted cost stream to States:						
3 percent .....	\$2.1	-\$0.3	-\$0.3	-\$0.3	-\$0.3	\$0.9
7 percent .....	2.0	-0.3	-0.3	-0.3	-0.2	0.9
Discounted cost stream to Businesses:						
3 percent .....	1.0	1.0	0.9	0.9	0.9	4.7
7 percent .....	0.9	0.9	0.8	0.8	0.7	4.1
Discounted transfer stream:						
low estimate:						
3 percent .....	4.5	4.4	4.3	4.2	4.1	21.4
7 percent .....	4.2	3.9	3.7	3.5	3.3	18.5
high estimate:						
3 percent .....	18.0	17.5	17.1	16.7	16.3	85.5
7 percent .....	16.7	15.6	14.7	13.9	13.1	74.0

Table 13 takes the discounted streams from Table 12 and computes annualized values in FY 2023 dollars.

TABLE 13—ACCOUNTING STATEMENT

	Range	Estimate	Year dollar	Discount rate (%)	Period covered
<b>Benefits</b>					
<i>Qualitative:</i> Increased program integrity and accountability.					
<i>Program participants:</i>					
Annualized Monetized (\$millions/year) .....	n.a.	n.a.	n.a.	n.a.	FY 2025–2029.

<sup>10</sup>Note that the discounted transfer streams include two components—3 and 7 percent discount rates plus the 3.2% inflation rate used to inflate

future nominal costs. Therefore, the discount rates applied to the nominal streams to generate these

estimates are approximately 6 percent and 10 percent, respectively.

TABLE 13—ACCOUNTING STATEMENT—Continued

	Range	Estimate	Year dollar	Discount rate (%)	Period covered
<b>Costs</b>					
<i>Quantitative:</i> Cost of a subset of administrative expenses related to additional reviews, documentation, reporting, training, recordkeeping, and MIS upgrades. (Only a portion of these costs have been estimated.)					
<i>State agencies, SFAs, and Institutions (Businesses):</i> Annualized Monetized (\$millions/year) .....	n.a	\$1.0 1.1	2023 2023	10 6	FY 2025–2029.
<b>Transfers</b>					
<i>Quantitative:</i> Distribution of CACFP audit funds to State agencies.					
<i>Non-quantified:</i> The return of (or reduction in) misappropriated program funds and improper payments.					
<i>From USDA to State Agencies:</i> Annualized Monetized (\$millions/year) .....	low	3.7 4.3	2023 2023	10 6	FY 2025–2029.
	high	14.8 17.1	2023 2023	10 6	

**Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. The FNS Administrator has certified that this final rule will not have a significant economic impact on a substantial number of small entities. This rulemaking codifies provisions designed to increase program operators’ accountability and operational efficiency, while improving the ability of FNS and State agencies to address severe or repeated violations of program requirements. While this rulemaking will affect State agencies, sponsoring organizations, school food authorities, and day care homes and centers, any economic effect will not be significant.

**Unfunded Mandates Reform Act**

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

**Executive Order 12372**

The Child and Adult Care Food Program is listed in the Assistance Listings under the Catalog of Federal Domestic Assistance Number 10.558. The Summer Food Service Program is listed under No. 10.559. The National School Lunch Program and School Breakfast Program are listed under No. 20.555 and 10.553, respectively. They are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Since the Child Nutrition Programs are State-administered, FNS has formal and informal discussions with State and local officials, including representatives of Indian tribal organizations, on an ongoing basis regarding program requirements and operations. This provides FNS with the opportunity to receive regular input from State administrators and local program operators, which contributes to the development of feasible requirements.

**Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the

regulations describing the agency’s considerations in terms of the three categories called for under section 6(b)(2)(B) of Executive Order 13132. FNS has determined that this final rule has federalism implications.

**1. Prior Consultation with State and Local Agencies:**

FNS has been gathering input from National, State, and local community partners through a variety of public engagement activities. Webinars, listening sessions, and town hall meetings have helped FNS monitor program operations, identify best practices, and take into consideration requests from States and local program operators. Since Child Nutrition Programs are State administered, federally-funded programs, FNS Regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance. Additionally, FNS published rulemaking actions to obtain formal public comment.

**2. Nature of Concerns and the Need to Issue this Rulemaking:**

State agencies and local program operators have provided wide support for implementing robust integrity practices and valuable suggestions for improvement. Most of their concerns relate to the current serious deficiency process as a model for establishing procedures in other Child Nutrition Programs, fiscal consequences of the provisions addressing fines and State liability, and the overall impact of provisions that may increase administrative burden. This rulemaking allows FNS to address these concerns while meeting statutory obligations.

**3. Extent to Which We Meet These Concerns:**

FNS has made every effort to address these concerns, balancing the goal of strengthening program integrity against the need to minimize administrative burden, within the constraints of statutory authority. This final rule is responsive to public input requesting that FNS make improvements to the serious deficiency process, limit the assessment of fines, and allow exceptions in cases involving State liability. There will be a 1-year delay to provide the additional time stakeholders have requested to implement many of the provisions. FNS will provide guidance and technical assistance to State agencies and local program operators to ensure the provisions of this final rule are implemented efficiently and in a manner that is least burdensome.

#### *Executive Order 12988, Civil Justice Reform*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rulemaking 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 rulemaking is not intended to have retroactive effect. Prior to any judicial challenge to the application of the provisions of this rulemaking, all applicable administrative procedures must be exhausted.

#### *Civil Rights Impact Analysis*

FNS has reviewed the final rule, in accordance with the Department Regulation 4300–004, “Civil Rights Impact Analysis” to identify and address any major civil rights impacts the final rule may have on participants on the basis of age, race, color, national origin, sex, and disability. Due to the unavailability of data, FNS is unable to determine whether this rule will have an adverse or disproportionate impact on protected classes among entities that administer and participate in the Child Nutrition programs. The promulgation of this final rule will impact State agencies that administer FNS Child Nutrition programs and program operators by increasing accountability and operational efficiency while improving the ability of State agencies to address severe or repeated violations of program requirements. Children and adults participating in NSLP, SMP, SBP, SFSP, and CACFP may be impacted by the final rule if an operating agreement in the CACFP or SFSP is terminated. However, the FNS Civil Rights Division finds that the current mitigation

strategies outlined in this CRIA provide ample consideration to participants’ ability to participate in Child Nutrition programs. Additionally, the FNS Civil Rights Division finds that mitigation strategies, such as delaying implementation of several provisions to allow FNS to evaluate regulatory improvements, developing resources, and providing technical assistance, may lessen the impacts on State agencies and program operators. If deemed necessary, the FNS Civil Rights Division will propose further mitigation to alleviate impacts that may result from the implementation of the final rule.

#### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Tribal representatives were informed about this rulemaking during the FNS listening session at the meeting of the National Congress of American Indians in February 2020 and at the tribal consultation that took place on May 23, 2023. FNS anticipates that this rulemaking will have no significant cost and no major increase in regulatory burden on tribal organizations.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collection of information requirements by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This final rule will implement statutory requirements and policy improvements to strengthen administrative oversight and operational performance of the Child Nutrition Programs. As FNS continues to work towards improving integrity in these programs, this final rule establishes criteria and procedures required under the Healthy, Hunger-Free Kids Act of 2010 to help FNS and State administering agencies reduce program errors of all types, resulting in more

effective operations and improved compliance with program requirements. FNS is also using this opportunity to codify statutory requirements that are designed to improve the administration and operational efficiency of the Child and Adult Care Food Program, with less paperwork. This rulemaking also simplifies monitoring requirements in the National School Lunch and School Breakfast Programs to reduce administrative burden by providing targeted flexibilities designed to allow States to tailor oversight to meet program circumstances.

In accordance with the Paperwork Reduction Act of 1995, this final rule revises existing information collection requirements and contains new information collection requirements, which are subject to review and approval by the Office of Management and Budget. These existing requirements are currently approved under OMB Control Number 0584–0055, “7 CFR part 226 Child and Adult Care Food Program,” expiration date March 31, 2025, OMB Control Number 0584–0280, “7 CFR Summer Food Service Program,” expiration date September 30, 2025, and OMB Control Number 0584–0006, “7 CFR part 210 National School Lunch Program,” expiration date July 31, 2023.

In connection with the proposed rule, “Child Nutrition Program Integrity,” published in the **Federal Register** on March 29, 2016 (Vol. 81, No. 60, page 17564), USDA submitted an Information Collection Request (ICR) discussing the information requirements impacted by the rule to OMB for review. The final rule codifies into regulations many of the provisions incorporated under the proposed rule, as well as modifies some to ensure compliance by State agencies and program operators. It also adds additional integrity safeguards, including incorporating provisions from the proposed rules, “Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs” and “Child and Adult Care Food Program: Amendments Related to the Healthy, Hunger-Free Kids Act of 2010.”

The majority of the information collection requirements and associated burdens will remain the same as previously proposed. However, there are a few changes in the requirements and burden. The revisions to the existing information collection requirements and the introduction of new information collection requirements will result in an overall increase in burden hours and responses on the State agencies, local government, and business respondents to this final rule.

Therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the proposals in this final rule. These burden estimates are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the final rulemaking information collection request is approved, the Department will publish a separate notice in the **Federal Register** announcing OMB's approval.

This is a new information collection, assigned OMB Control Number 0584–0610 by OMB in August 2016 at the proposed rule stage, which is being submitted in support of the final rule, “Child Nutrition Program Integrity (RIN 0584–AE08).” In connection with the proposed rule, “Child Nutrition Program Integrity, published in the **Federal Register** on March 29, 2016 (81 FR 17564),” FNS submitted an ICR discussing the information requirements impacted by the rule to the Office of Management and Budget (OMB) for review.

The final rule codifies many of the changes proposed by FNS based on amendments to the Richard B. Russell National School Lunch Act (NSLA), enacted under the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), Public Law 111–296. The final rule incorporates provisions from the *Child and Adult Care Food Program: Amendments Related to the Healthy, Hunger-Free Kids Act of 2010 Proposed Rule* and the *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs Proposed Rule*. The information collection associated with this rule is necessary to ensure compliance with legislative and regulatory requirements amended to the NSLA and contained in HHFKA.

Since FNS had requested a new information collection at the proposed rule stage, due to the information collection inventories affected by this rulemaking undergoing renewal, the proposals outlined in this final rule will be captured in a new information collection under OMB Control Number 0584–0610 as an increase to the information collection inventory. After OMB has approved the information collection requirements submitted in conjunction with the final rule and the current renewals of the impacted information collections are completed, FNS will merge these requirements and their burden into OMB Control Number 0584–0055, “7 CFR part 226 Child and Adult Care Food Program,” expiration date March 31, 2025, OMB Control Number 0584–0280, “7 CFR Summer

Food Service Program,” expiration date September 30, 2025, and OMB Control Number 0584–0006, “7 CFR part 210 National School Lunch Program,” expiration date July 31, 2023. At this point, the decreases in burden noted throughout this section will be fully captured in the burden for the various collections.

Comments on the Paperwork Reduction Act section of this final rule must be received by October 23, 2023. Please send comments to Program Monitoring and Operational Support Division 1320 Braddock Place, Alexandria, VA 22314. For further information, please contact Megan Geiger, [megan.geiger@usda.gov](mailto:megan.geiger@usda.gov).

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

*Title:* Child Nutrition Program Integrity.

*Form Number:* None.

*OMB Control Number:* 0584–0610.

*Expiration Date:* Not Yet Determined.

*Type of Request:* New Collection.

While OMB assigned an OMB Control Number to this collection during the proposed rule stage, the collection is not yet part of the active information collection inventory.

*Abstract:* This is a new information collection that contains new information collection requirements that will eventually be incorporated into OMB Control Number 0584–0055, “7 CFR part 226 Child and Adult Care Food Program,” OMB Control Number 0584–0280, “7 CFR Summer Food Service Program,” and OMB Control Number 0584–0006, “7 CFR part 210 National School Lunch Program.” This new information collection also revises existing information collection requirements in the same OMB Control Numbers that are also impacted by this final rule.

This final rule codifies provisions designed to increase program operators' accountability and operational efficiency, while improving the ability of FNS and State agencies to address severe or repeated violations of program requirements. This rulemaking impacts information reporting, recordkeeping, and public notification at the State and local government levels (State agencies and sponsoring organizations) and at the businesses level (sponsoring organizations) in the Child and Adult Care Food Program (CACFP); at the State and local government level (State agencies and School Food Authorities (SFAs)) in the Summer Food Service Program (SFSP); and at the State and local government level (State agencies and SFAs) in the National School Lunch Program (NSLP).

FNS is using the publication of the *Child Nutrition Program Integrity* final rule as an opportunity to additionally merge sections of two previously published rules that were not finalized and codified. This includes the *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs and Child and Adult Care Food Program: Amendments Related to the Healthy, Hunger-Free Kids Act of 2010*.

In the proposed rule, *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs* (85 FR 4094, January 23, 2020), FNS included a number of discretionary changes to streamline the administrative review process for schools, without compromising State agency and school food authority efforts to maintain accountability and integrity. Through the *Child Nutrition Program Integrity* final rule, FNS is taking action to codify the proposed changes that impact monitoring. These amendments will give State agencies greater flexibility, eliminate redundancy, and target limited State resources to higher risk school food authorities. Provisions in *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs* unrelated to monitoring and oversight will not be finalized in the *Child Nutrition Program Integrity* Final Rule and will instead be incorporated in other rulemaking.

The proposed rule, *Child and Adult Care Food Program: Amendments Related to the Healthy, Hunger-Free Kids Act of 2010* (77 FR 21018, April 9, 2012), included amendments to codify statutory requirements designed to improve the administration and operational efficiency of CACFP, with



less paperwork. However, in the intervening years since publication of the proposed rule, FNS was unable to publish a subsequent rulemaking to incorporate these amendments into CACFP regulations under 7 CFR part 226. Through the *Child Nutrition Program Integrity* final rule, FNS is taking action to codify these statutory requirements, which will provide clarity and consistency in their implementation. FNS will not codify any of the discretionary provisions included in the proposed rule.

The changes proposed in the *Child Nutrition Program Integrity Rule* that will not be finalized are the requirement that SFAs contracting with an FSMC can no longer use cost-reimbursable contracts, reciprocal disqualification in CACFP and SFSP, and serious deficiency process and disqualification in SFSP and CACFP. FNS will pursue a separate rule making for the reciprocal disqualification in CACFP and SFSP, as well as the serious deficiency process and disqualification in SFSP and CACFP in response to public comments. FNS intends to seek more information on the fixed-price contract provision in response to information collected during the COVID-19 public health emergency.

In total, FNS estimates that the changes to the Child Nutrition Program requirements as a result of this rule decrease the burden for the NSLP information collection, OMB Control Number 0584-0006, by 14,734 hours; increase the burden for the SFSP information collection, OMB Control Number 0584-0280, by 80.81 hours; and increase the burden for the CACFP information collection, OMB Control Number 0584-0055, by 22,190.72 hours. The provisions from the previously proposed rules that are included in this final rule are related to increasing program integrity and codifying statutory requirements into regulations.

In the proposed Child Nutrition Integrity Rule, FNS expected 23,113 responses and 16,060.5 burden hours. For this final rule, because of changes due to merging this rule with two other rules, moving some provisions to another rulemaking (on Serious Deficiency), and other changes due to public feedback, FNS has adjusted the burden for this final rule. FNS now expects that this final rule will increase over that estimated in the proposed rule, to 225,205 total responses and 190,924 total burden hours.

Below is a summary of the changes in the final rule and the accompanying reporting, recordkeeping, and public notification requirements that will impact the burden that these program

requirements have on State agencies, local governments, and businesses.

#### *Reporting: NSLP*

##### Affected Public: State Agencies

The changes proposed in this rule will impact the existing reporting requirements currently approved under OMB Control Number 0584-0006 and found at 7 CFR part 210, National School Lunch Program. The below information provides details regarding the reporting changes associated with OMB Control Number 0584-0006 as a result of the Child Nutrition Program Integrity final rule OMB Control Number 0584-0610.

The final rule adjusts a requirement at Section 210.18(i)(3) for the State agencies to notify the School Food Authorities (SFAs) in writing of review findings, corrective actions, deadlines, and potential fiscal action with grounds and right to appeal. FNS estimates that 56 State agencies will respond, for a total of 3,808 responses ( $56 \times 68 = 3,808$ ). The estimated average number of burden hours per response is 8 hours resulting in an estimated total annual burden hours of 30,464 ( $3,808 \times 8 = 30,464$ ). FNS estimates that this information requirement will have 30,464 burden hours and 3,808 responses. Once the requirements and burden from this new collection are merged into OMB Control Number 0584-0006 (7 CFR PART 210 NATIONAL SCHOOL LUNCH PROGRAM), FNS estimates that this final rule will reduce the burden hours by 20,160 hours, from 50,624 to 30,464 hours. It will also reduce the responses by 2,520, from 6,328 to 3,808 responses. This reduction is due to a program change reducing the frequency of the administrative review cycle.

The final rule amends the requirements found at Section 210.5(d)(2)(ii) (now at Section 210.5(d)(3)) that SAs submit a quarterly report to FNS detailing the disbursement of performance-based reimbursement to SFAs by changing the frequency of the report to annually. FNS estimates that there are 56 SAs that will each file 1 report annually for a total of 56 responses ( $56 \times 1 = 56$ ). The estimated average number of burden hours per response is 15 minutes (0.25 hours) resulting in an estimated total annual burden hours of 14 ( $56 \times 0.25 = 14$ ). FNS estimates that this information requirement will have 14 burden hours and 56 responses. The previous burden (OMB#0584-0006) was 56 hours, so with this final rule, FNS estimates that the burden will be reduced by 42 burden hours. The final rule will also

reduce the responses by 168, from 224 to 56 responses. These reductions are due to a program change reducing the frequency of this report.

The final rule adds a requirement at Section 210.18(c)(2) that State agencies with a review cycle longer than 3 years must submit a plan to FNS describing the criteria that it will use to identify high-risk SFAs for targeted follow-up reviews. FNS estimates there are 56 SAs that will each file 1 report for a total of 56 responses ( $56 \times 1 = 56$ ). The estimated average number of burden hours per response is 8 hours resulting in an estimated total annual burden hours of 488 ( $56 \times 8 = 488$ ). FNS estimates that this information requirement will have 448 burden hours and 56 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0006, FNS estimates that this final rule will add 448 hours and 56 responses to OMB's inventory due to a program change.

This final rule adds a specific requirement to Section 210.21(h), that State agencies complete procurement training requirements annually. FNS estimates that each of the 56 SAs will complete procurement training requirements annually, for a total of 56 responses annually ( $56 \times 1 = 56$ ). The estimated average number of burden hours per response is 1 hour resulting in estimated total burden hours of 56 ( $56 \times 1 = 56$ ). FNS estimates that this information requirement will have 56 burden hours and 56 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0006, FNS estimates that this final rule will add 56 hours and 56 responses to OMB's inventory due to a program change.

Section 210.26(b)(4) requires that State agencies notify SFAs of fines and specific violations or actions that constituted the fine, and of appeal rights and procedures, and submit a copy of the notice to FNS. FNS estimates that each of the 56 State agencies will notify SFAs of fines, specific violations, actions that constituted the fine, appeal rights, and procedures, and submit a copy of the notice to FNS 0.09 times, for a total of 5.04 notifications annually ( $56 \times 0.09 = 5.04$ ). The estimated average number of burden hours per response is 3 hours, resulting in estimated total burden hours of 15.12 ( $5.04 \times 3 = 15.12$ ). FNS estimates that this information requirement will have 15.12 burden hours and 5.04 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0006, FNS estimates that this final rule will add 15.12 hours and 5.04

responses to OMB's inventory due to a program change.

Affected Public: SFAs/Local Education Agency Level

Sections 210.15(a)(3) and 210.18(j)(2) require SFAs to submit to the SA a written response to reviews documenting corrective action taken for Program deficiencies. FNS estimates 3,804 SFAs will each file 1 report annually for a total of 3,804 responses ( $3,804 \times 1 = 3,804$ ). The estimated average number of burden hours per response is 8 hours resulting in an estimated total annual burden hours of 30,430 ( $3,804 \times 8 = 30,430$ ). FNS estimates that this information requirement will have 30,430 burden hours and 3,804 responses. Once the requirements and burden from this new collection are merged into OMB Control Number 0584-0006, FNS estimates that this final rule will reduce the burden hours by 20,290 hours, from 50,720 to 30,430 hours. It will also reduce the responses by 2,536, from 6,340 to 3,804 responses. This reduction is due to a program change reducing the frequency of the administrative review cycle.

Section 210.21(h) requires that SFAs complete procurement training requirements annually. FNS estimates that 19,019 SFAs will complete procurement training requirements annually, for a total of 19,019 records annually ( $19,019 \times 1 = 19,019$ ). The estimated average number of burden hours per response is 1 hour and 15 minutes (1.25 hours) resulting in estimated total burden hours of 23,774 ( $19,019 \times 1.25 = 23,774$ ). FNS estimates that this information requirement will have 23,774 burden hours and 19,019 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0006, FNS estimates that this final rule will add 23,774 hours and 19,019 responses to OMB's inventory due to a program change.

Section 210.26(b)(5) states that SFAs may appeal State agency's determination of violations and fines. SFAs must submit to the State agency any pertinent information, explanation, or evidence addressing the Program violations identified by the SA. Any SFA seeking to appeal the SA determination must follow SA appeal procedures. FNS estimates that 5 SFAs will appeal the State agency's determination of violations and fines, for a total of 5 records annually ( $5 \times 1 = 5$ ). The estimated average number of burden hours per response is 8 hours resulting in estimated total burden hours of 40 ( $5 \times 8 = 40$ ). FNS estimates that this information requirement will

have 40 hours and 5 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0006, FNS estimates that this final rule will add 40 hours and 5 responses to OMB's inventory due to a program change.

*Recordkeeping: NSLP*

Affected Public: State Agencies

Section 210.18(h)(2)(iv) requires each SA to ensure that the LEA and SFA comply with the nutrition standards for all competitive food and maintain records documenting compliance. FNS estimates that 56 SAs will each maintain 68 records annually for a total estimated number of records of 3,808 ( $56 \times 68 = 3,808$ ). The estimated average number of burden hours per record is 15 minutes (0.25 hours) resulting in an estimated total annual burden hours of 952 ( $3,808 \times 0.25 = 952$ ). When OMB approves the information collection request (ICR) for this final rule, FNS estimates that this information requirement will have 952 burden hours and 3,808 responses. Once the requirements and burden from this new collection are merged into OMB Control Number 0584-0006, FNS estimates that this final rule will reduce the burden hours by 630 hours, from 1,582 hours to 952 hours. It will also reduce the responses by 2,520, from 6,328 responses to 3,808 responses. This reduction is due to a program change from the Final Rule, reducing the number of compliance reviews.

Sections 210.20(b)(6); 210.18(o)(f)(k)(l)(m); and 210.23(c) require the SA to maintain records of all reviews and audits (including Program violations, corrective action, fiscal action, and withholding of payments). The currently approved burden for this activity is 50,638. FNS estimates that there are 56 SAs that will each file 68 records annually for a total of 3,808 records ( $56 \times 68 = 3,808$ ). The estimated average number of burden hours per record is 8.00214 hours resulting in a revised estimated total annual burden hours of 30,472 hours ( $3,808 \times 8.00214 = 30,472$ ). When OMB approves the information collection request (ICR) for this final rule, FNS estimates that this information requirement will have 30,472 burden hours and 3,808 responses. Once the requirements and burden from this new collection are merged into OMB Control Number 0584-0006, FNS estimates that this final rule will reduce the burden hours by 20,166 hours, from 50,638 hours to 30,472 hours. It will also reduce the responses by 2,520, from 6,328 to 3,808 responses. This reduction is due to a

program change from the Final Rule, reducing the number of compliance reviews.

Sections 210.20(b)(7); 210.19(c); and 210.18(o) require the SA document fiscal action taken to disallow improper claims submitted by SFAs, as determined through claims processing, reviews and USDA audits. FNS estimates that there are 56 SAs that will each file 68 records annually for a total of 3,808 records ( $56 \times 68 = 3,808$ ). The estimated average number of burden hours per record is 30 minutes (0.50 hours) resulting in an estimated total annual burden hours of 1,904 hours ( $3,808 \times 0.5 = 1,904$ ). When OMB approves the information collection request (ICR) for this final rule, FNS estimates that this information requirement will have 1,904 burden hours and 3,808 responses. Once the requirements and burden from this new collection are merged into OMB Control Number 0584-0006, FNS estimates that this final rule will reduce the burden hours by 1,260 hours, from 3,164 hours to 1,904 hours. It will also reduce the responses by 2,520, from 6,328 to 3,808 responses. The reduction in burden is due to a program change from the Final Rule, reducing the number of compliance reviews.

Sections 210.18(c-h) require the SA to complete and maintain documentation used to conduct Administrative Reviews. FNS estimates there are 56 SAs that will each file 68 reports annually for a total of 3,808 responses ( $56 \times 68 = 3,808$ ). The estimated average number of burden hours per response is 30 minutes (.50 hours) resulting in an estimated total annual burden hours of 1,904 ( $3,808 \times .5 = 1,904$ ). When OMB approves the information collection request (ICR) for this final rule, FNS estimates that this information requirement will have 1,904 burden hours and 3,808 responses. Once the requirements and burden from this new collection are merged into OMB Control Number 0584-0006, FNS estimates that this final rule will reduce the burden hours by 1,269 hours, from 3,173 hours to 1,904 hours. It will also reduce the responses by 2,520, from 6,328 to 3,808 responses. The reduction in burden is due to a program change from the Final Rule, reducing the number of compliance reviews.

Section 210.18(c) requires the SA to complete and maintain documentation used to conduct targeted Follow Up Administrative Review. FNS estimates there are 56 SAs that will each file 23 reports annually for a total of 1,288 responses ( $56 \times 23 = 1,288$ ). The estimated average number of burden hours per response is 16 hours resulting

in an estimated total annual burden hours of 20,608 ( $1,288 \times 16 = 20,608$ ). When OMB approves the information collection request (ICR) for this final rule, FNS estimates that this information requirement will have 20,608 burden hours and 1,288 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0006, FNS estimates that this final rule will add 20,608 hours and 1,288 responses to OMB's inventory due to a program change.

Section 210.15(b)(8) requires that State agencies maintain records to document compliance with the procurement training requirements. FNS estimates that each of the 56 State agencies will maintain 1 record to document compliance with the procurement training requirements, for a total of 56 records annually ( $56 \times 1 = 56$ ). The estimated average number of burden hours per response is 15 minutes (0.25 hours) resulting in estimated total burden hours of 14 ( $56 \times 0.25 = 14$ ). When OMB approves the information collection request (ICR) for this final rule, FNS estimates that this information requirement will have 14 burden hours and 56 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0006, FNS estimates that this final rule will add 14 hours and 56 responses to OMB's inventory due to a program change.

Section 210.26(b) requires that State agencies maintain records related to fines and specific violations. FNS estimates that each of the 56 State agencies will maintain 0.09 records to related fines and specific violations, for a total of 5.04 records annually ( $56 \times 0.09 = 5.04$ ). The estimated average number of burden hours per response is 15 minutes (0.25 hours) resulting in estimated total burden hours of 1.26 hours ( $5.04 \times 0.25 = 1.26$ ). When OMB approves the information collection request (ICR) for this final rule, FNS estimates that this information requirement will have 1.26 burden hours and 5.04 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0006, FNS estimates that this final rule will add 1.26 hours and 5.04 responses to OMB's inventory due to a program change.

#### Affected Public SFAs/LEAs

Section 210.21(h) requires that SFAs maintain document compliance with the procurement training requirements. FNS estimates that 19,019 SFAs will maintain document compliance with the procurement training requirements,

for a total of 19,019 records annually ( $19,019 \times 1 = 19,019$ ). The estimated average number of burden hours per response is 15 minutes (0.25 hours) resulting in estimated total burden hours of 4,755 hours ( $19,019 \times 0.25 = 4,755$ ). When OMB approves the information collection request (ICR) for this final rule, FNS estimates that this information requirement will have 4,755 burden hours and 19,019 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0006, FNS estimates that this final rule will add 4,755 hours and 19,019 responses to OMB's inventory due to a program change.

#### Public Notification: NSLP

##### Affected Public: State Agencies

Section 210.18(m)(1) requires SAs to make the most recent final administrative review results available to the public in an easily accessible manner (by posting a summary to the SA website and making a copy available upon request). FNS estimates there are 56 SAs that will each file 68 reports annually for a total of 3,808 responses ( $56 \times 68 = 3,808$ ). The estimated average number of burden hours per response is 15 minutes (0.25 hours) resulting in an estimated total annual burden hours of 952 ( $3,808 \times 0.25 = 952$ ). FNS estimates that this information requirement will have 952 burden hours and 3,808 responses. The previous burden (OMB# 0584–0006) was 1,582 hours and 6,328 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0006, FNS estimates that this final rule results in a decrease of 630 burden hours and a decrease of 2,520 responses, from 6,328 responses to 3,808 due to a program change reducing the frequency of the administrative review.

#### Reporting SFSP

##### Affected Public: State Agencies

The changes proposed in this rule will impact the reporting burden currently approved under OMB Control Number 0584–0280 and found at 7 CFR part 225, Summer Food Service Program. The below information provides details regarding the reporting changes associated with OMB Control Number 0584–0280 as a result of the Child Nutrition Program Integrity final rule, OMB control number 0584–0610.

Section 225.6(i) requires that State agencies consult with FNS prior to taking any action to terminate for convenience. This is a new information requirement resulting from this final rule. FNS estimates that each of the 53 State agencies will consult with FNS

once prior to taking any action to terminate for convenience, for a total of 53 consultations ( $53 \times 1 = 53$ ). The estimated average number of burden hours per notification is 30 minutes (0.5 hours) resulting in estimated total burden hours of 27 ( $53 \times 0.5 = 27$ ). FNS estimates that this information requirement will have 27 burden hours and 53 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0280 (7 CFR Summer Food Service Program), FNS estimates that this final rule results in an increase of 27 burden hours and 53 responses due to a program change.

Section 225.18(k) requires that State agencies notify SFAs of fines and submit a copy of the notice to FNS. FNS estimates that each of the 53 State agencies will notify SFAs of fines and submit a copy of the notice to FNS 0.09 times, for a total of 4.77 notifications annually ( $53 \times 0.09 = 4.77$ ). The estimated average number of burden hours per response is 3 hours, resulting in estimated total burden hours of 14.31 ( $4.77 \times 3 = 14.31$ ). FNS estimates that this information requirement will have 14.31 hours and 4.77 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0280, FNS estimates that this final rule results in an increase of 14.31 burden hours and 4.77 responses due to a program change.

Section 225.18(k) states that SFAs may appeal State agency's determination of fines. SFAs must submit to the State agency any pertinent information, explanation, or evidence addressing the Program violations identified by the State agency. Any SFA seeking to appeal the State agency determination must follow State agency appeal procedures. FNS estimates that 5 SFAs will appeal the State agency's determination of violations and fines, for a total of 5 records annually ( $5 \times 1 = 5$ ). The estimated average number of burden hours per response is 8 hours resulting in estimated total burden hours of 40 ( $5 \times 8 = 40$ ). FNS estimates that this information requirement will have 40 burden hours and 5 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0280, FNS estimates that the final rule will result in an increase of 40 burden hours and 5 responses due to a program change.

#### Record Keeping: SFSP

There is no change in burden for the record keeping requirements in the SFSP due to this rulemaking.

*Reporting: CACFP*

The changes proposed in this rule will impact the existing reporting requirements currently approved under OMB Control Number 0584–0055 and found at 7 CFR part 226, Child and Adult Care Food Program. The below information provides details regarding the reporting changes associated with OMB Control Number 0584–0055 as a result of the Child Nutrition Program Integrity final rule, OMB control number 0584–0610.

*Affected Public: State Agencies*

Section 226.4(j) requires State agencies to submit a plan to FNS for additional audit funding. This is a new information requirement resulting from this final rule. FNS estimates that on average there are 8 State agencies that will each file 1 report annually for a total of 8 responses ( $8 \times 1 = 8$ ). The estimated average number of burden hours per response is 4 hours resulting in estimated total burden hours of 32 ( $8 \times 4 = 32$ ). FNS estimates that this information requirement will have 32 hours and 8 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055 (7 CFR part 226 Child and Adult Care Food Program), FNS estimates that this final rule will add 32 burden hours and 8 responses to OMB's inventory due to a program change.

Section 226.6(k)(11)(iii) allows the SA to submit, for FNS review, information supporting a request for a reduction in the State's liability, a reconsideration of the State's liability, or an exception to the 60-day deadline, for exceptional circumstances. FNS estimates that on average there will be 5 State agencies that will each file 1 request annually for a total of 5 responses ( $5 \times 1 = 5$ ). The estimated average number of burden hours per response is 4 hours resulting in estimated total burden hours of 20 ( $5 \times 4 = 20$ ). FNS estimates that this information requirement will have 20 burden hours and 5 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055, FNS estimates that this final rule will add 20 hours and 5 responses to OMB's inventory due to a program change.

Section 226.6(b)(4)(ii) requires State agencies to consult with FNS prior to taking action to terminate for convenience. FNS estimates that each of the 56 State agencies will consult with FNS once per year prior to terminating a sponsoring organization for convenience, for a total of 56 responses annually ( $56 \times 1 = 56$ ). The estimated average number of burden hours per

response is 30 minutes (0.5 hours), resulting in estimated total burden hours of 28 hours ( $56 \times 0.5 = 28$ ). FNS estimates that this information requirement will have 28 burden hours and 56 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055, FNS estimates that this final rule results in an increase of 28 burden hours and 56 responses due to a program change.

Section 226.6(m)(6) requires that State agencies conduct reviews every two years for sponsoring organizations with less than 100 facilities and conduct activities other than the CACFP or are at risk of having serious management problems. FNS estimates that each of the 56 State agencies will each conduct 20 reviews for sponsoring organizations every two years (nationwide, average 10 with less than 100 centers and conduct activities other than CACFP and average 10 having serious management problems), for a total of 1,120 reviews biennially ( $56 \times 20 = 1,120$ ). The estimated average number of burden hours per response is 4 hours resulting in estimated total burden hours of 4,480 ( $1,064 \times 4 = 4,480$ ). FNS estimates that this information requirement will have 4,480 burden hours and 1,120 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055, FNS estimates that this results in an increase of 4,480 burden hours and 1,120 responses due to a program change.

Section 226.7(b)(1) requires that State agencies have procedures in place for annually reviewing at least one month of the sponsoring organization's bank account activity against other associated records to verify that the transactions meet program requirements. FNS estimates that each of the 56 State agencies will each have reviewing procedures in place to review sponsoring organization's bank account activity, for a total of 56 procedures annually ( $56 \times 1 = 56$ ). The estimated average number of burden hours per response is 1 hour resulting in estimated total burden hours of 56 ( $56 \times 1 = 56$ ). FNS estimates that this information requirement will have 56 burden hours and 56 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055 (7 CFR part 226 Child and Adult Care Food Program), FNS estimates that this results in an increase of 56 burden hours and 56 responses to OMB's inventory due to a program change.

Section 226.7(b)(1)(ii) requires that State agencies have procedures for annually reviewing a sponsoring

organization's actual expenditures of CACFP funds and the amount of meal reimbursement funds retained from unaffiliated centers. FNS estimates that there are 56 State agencies that will each have reviewing procedures in place to review sponsoring organizations' CACFP funds and meal reimbursement funds retained from unaffiliated centers, for a total of 56 reviewing procedures annually ( $56 \times 1 = 56$ ). The estimated average number of burden hours per reviewing procedures is 1 hour resulting in estimated total burden hours of 56 ( $56 \times 1 = 56$ ). FNS estimates that this information requirement will have 56 burden hours and 56 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055, FNS estimates that this results in an increase of 56 burden hours and 56 responses to OMB's inventory due to a program change.

Section 226.25(j) requires that State agencies notify SFAs of fines and submit a copy of the notice to FNS. FNS estimates that each of the 56 State agencies will notify SFAs of fines and submit a copy of the notice to FNS 0.09 times, for a total of 5.04 notifications annually ( $56 \times 0.09 = 5.04$ ). The estimated average number of burden hours per response is 3 hours, resulting in estimated total burden hours of 15.12 ( $5.04 \times 3 = 15.12$ ). FNS estimates that this information requirement will have 15.12 burden hours and 5.04 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055, FNS estimates that this final rule results in an increase of 15.12 burden hours and 5.04 responses to OMB's inventory due to a program change.

Section 226.6(b)(2) requires that State agencies review annual certification of an institution's eligibility to continue participating in CACFP (which replaces the renewal application process). FNS estimates that there are 56 State agencies that will each have to review 390 certifications, for a total of 21,840 reviews annually ( $56 \times 390 = 21,840$ ). The estimated average number of burden hours per review is 20 minutes (.334 hours), resulting in estimated total burden hours of 7,295 ( $21,840 \times .334 = 7,295$ ). When OMB approves the information collection request (ICR) for this final rule, FNS estimates that this information requirement will have 7,295 burden hours and 21,840 responses. Once the requirements and burden from this new collection are merged into OMB Control Number 0584–0055, FNS estimates that this final rule will reduce the burden hours by 3,625 hours, from 10,920 to 7,295 hours. The number of responses will remain at 21,840

responses. This reduction is the result of a program change due to the Final Rule, due to the reduced number of hours it will take State agencies for this review.

Section 226.6(m)(3)(ix) requires that State agencies assess the timing of each sponsoring organization's reviews of day care homes and sponsored centers. FNS estimates that there are 56 State agencies that will each have to review the timing of 390 sponsors, for a total of 21,840 reviews annually ( $56 \times 390 = 21,840$ ). The estimated average number of burden hours per review is 10 minutes (.167 hours), resulting in estimated total burden hours of 3,640 ( $21,840 \times .17 = 3,640$ ). FNS estimates that this information requirement will have 3,640 burden hours and 21,840 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0055, FNS estimates that this final rule results in an increase of 3,640 burden hours and 21,840 responses to OMB's inventory due to a program change.

Section 226.6(p) requires State agencies to develop/revise and provide a sponsoring organization agreement between sponsor and facilities, which must have standard provisions. FNS estimates that there are 56 State agencies that will each have to develop 1 agreement, for a total of 56 agreements, as a one-time burden ( $56 \times 1 = 56$ ). The estimated average number of burden hours per agreement is 6 hours, resulting in estimated total burden hours of 336 ( $56 \times 6 = 336$ ). FNS estimates that this information requirement will have 336 burden hours and 56 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0055, FNS estimates that this results in an increase of 336 burden hours and 56 responses to OMB's inventory due to a program change.

Section 226.12(a) requires the State agency to multiply the appropriate administrative reimbursement rate by the number of day care homes submitting claims for reimbursement during the month, to determine the amount of payment that sponsoring organizations will receive. FNS estimates that there are 56 State agencies that will each determine payments for 11 sponsors, for a total of 623 sponsors paid annually ( $56 \times 11 = 623$ ). The estimated average number of burden hours per sponsor's calculation is ten minutes per year (.167 hours), resulting in estimated total burden hours of 104 ( $623 \times .167 = 104$ ). FNS estimates that this information requirement will have 104 burden hours and 623 responses. Once this requirement and its associated burden is

merged into OMB Control Number 0584-0055, FNS estimates that this results in an increase of 104 burden hours and 623 responses to OMB's inventory due to a program change.

Section 226.7(g)(2) requires the State agency to review the budget and supporting documentation prior to approval, for sponsoring organizations of day care homes seeking to carry over administrative funds. FNS estimates that there are 56 State agencies that will each review and approve 11 budgets, for a total of 623 responses ( $56 \times 11 = 623$ ). The estimated average number of burden hours per State agency is 1 hour, resulting in estimated total burden hours of 623 ( $1 \times 623 = 623$ ). FNS estimates that this information requirement will have 623 burden hours and responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0055, FNS estimates that this results in an increase of both 623 burden hours and responses to OMB's inventory due to a program change.

Section 226.7(j) requires each State agency to establish procedures to recover administrative funds from sponsoring organizations of day care homes that are not properly payable under FNS Instruction 796-2, administrative funds that are in excess of the 10 percent maximum carryover amount, and carryover amounts that are not expended or obligated by the end of the fiscal year following the fiscal year in which they were received. FNS estimates that there are 56 State agencies that will each establish 1 procedure, for a one-time burden total of 56 responses ( $56 \times 1 = 56$ ). The estimated average number of burden hours per State agency is 2 hours, resulting in estimated total burden hours of 112 ( $2 \times 56 = 112$ ). FNS estimates that this information requirement will have 112 burden hours and 56 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0055, FNS estimates that this results in an increase of 112 burden hours and 56 responses to OMB's inventory due to a program change.

Affected Public: Local Governments (Sponsoring Organizations)

Section 226.7(b)(1) requires sponsoring organizations to annually provide State agencies with bank account activity against other associated records to verify that the transactions meet program requirements. FNS estimates that there are 3,257 sponsoring organizations that are local agencies. Each sponsoring organization will submit 1 bank statement to their

respective State agency, resulting in 3,257 annual records ( $3,257 \times 1 = 3,257$ ). FNS estimates that it will take an average of 15 minutes (0.25 hours) per response; therefore, this change will result in an estimated total burden hours of 814 hours annually ( $3,257 \times 0.25 = 814$ ). FNS estimates that this information requirement will have 814 burden hours and 3,257 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0055, FNS estimates that this results in an increase of 814 burden hours and 3,257 responses to OMB's inventory due to a program change.

Section 226.7(b)(1)(i) requires sponsoring organizations to provide State agency with actual expenditures of CACFP funds and the amount of meal reimbursement funds retained from unaffiliated centers to support the sponsoring organization's administrative costs. FNS estimates that 32 sponsoring organizations will provide their State agency with 1 actual expenditure of CACFP funds and the amount of meal reimbursement funds retained from unaffiliated centers, for a total of 32 expenditures annually ( $32 \times 1 = 32$ ). FNS estimates that it will take an average of 1 hour per submission; therefore, this change will result in an estimated total burden hours of 32 hours annually ( $32 \times 1 = 32$ ). FNS estimates that this information requirement will have 32 burden hours and responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0055, FNS estimates that this results in an increase of both 32 burden hours and responses to OMB's inventory due to a program change.

Section 226.6(b) requires that each participating institution submit annual updates to continue its participation (annual certification of information, updated licensing information, and a budget). This replaces the renewal application process in 226.6(f)(2)(i). FNS estimates that there are 3,257 institutions that will each have 1 annual update, for a total of 3,257 updates annually ( $3,257 \times 1 = 3,257$ ). The estimated average number of burden hours per review is 20 minutes (.33 hours), resulting in estimated total burden hours of 1,088 ( $3,257 \times .334 = 1,088$ ). FNS estimates that this information requirement will have 1,088 burden hours and 3,257 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0055, FNS estimates that this final rule will reduce the burden hours by 541 hours, from 1,629 to 1,088 hours. The number of responses will remain at 3,257 responses. This reduction is due to a program change

from the Final Rule, due to the lower amount of time it will take institutions to submit updates rather than renewal applications.

Sections 226.6(p), 226.17(e), (f), 226.17a(f), 226.19(d), and 226.19a(d) require that each sponsoring organization must enter into permanent agreements with their unaffiliated centers. FNS estimates that there are 32 sponsoring organizations that will each enter into 10 agreements, for a total of 320 agreements as a one-time burden ( $32 \times 10 = 320$ ). The estimated average number of burden hours per review is 30 minutes (.5 hours), resulting in estimated total burden hours of 160 ( $320 \times .5 = 160$ ). FNS estimates that this information requirement will have 160 burden hours and 320 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055, FNS estimates that this results in an increase of 160 burden hours and 320 responses to OMB's inventory due to a program change.

Section 226.6(f)(1)(iv) requires sponsoring organizations of day care homes seeking to carry over administrative funds to submit an amended budget, to include an estimate of requested administrative fund carryover amounts and a description of proposed purpose for which those funds would be obligated or expended. FNS estimates that there are 83 sponsoring organizations that will each file 1 report, for a total of 83 reports ( $83 \times 1 = 83$ ). The estimated average number of burden hours per report is 1 hour, resulting in estimated total burden hours of 83 ( $1 \times 83 = 83$ ). FNS estimates that this information requirement will have 83 burden hours and responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055, FNS estimates that this results in an increase of both 83 burden hours and responses to OMB's inventory due to a program change.

Section 226.25 states that SFAs may appeal the State agency's determination of fines. SFAs must submit to the State agency any pertinent information, explanation, or evidence addressing the Program violations identified by the State agency. FNS estimates that 5 SFAs will appeal the State agency's determination of violations and fines, for a total of 5 records annually ( $5 \times 1 = 5$ ). The estimated average number of burden hours per response is 8 hours resulting in estimated total burden hours of 40 ( $5 \times 8 = 40$ ). FNS estimates that this information requirement will have 40 burden hours and 5 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055, FNS estimates that

the final rule will result in an increase of 40 burden hours and 5 responses to OMB's inventory due to a program change.

Section 226.23(e)(1)(vii) states that if a tier II day care home elects to assist in collecting and transmitting the applications to the sponsoring organization, sponsoring organizations must establish procedures to ensure the provider does not review or alter the application. FNS estimates that 83 sponsoring organizations will establish procedures, for a total of 83 records as a one-time burden ( $83 \times 1 = 83$ ). The estimated average number of burden hours per response is 1 hour resulting in estimated total burden hours of 83 ( $83 \times 1 = 83$ ). FNS estimates that this information requirement will have 83 burden hours and responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055, FNS estimates that the final rule will result in an increase of both 83 burden hours and responses to OMB's inventory due to a program change.

#### Affected Public: Businesses

Section 226.7(b)(1)(i) requires sponsoring organizations to annually provide State agencies with bank account activity against other associated records to verify that the transactions meet program requirements. FNS estimates that there are 18,601 sponsoring organizations that are businesses, each of which will submit 1 month's bank statement to their State agency for a total of 18,601 annual records. FNS expects it will take an average of 15 minutes (0.25 hours) for the sponsoring organization to report their bank activity to the State agency, resulting in estimated total burden hours of 4,650 ( $18,601 \times 0.25 = 4,650$ ). FNS estimates that this information requirement will have 4,650 burden hours and 18,601 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055, FNS estimates that the final rule will result in an increase of 4,650 burden hours and 18,601 responses to OMB's inventory due to a program change.

Section 226.7(b) requires that sponsoring organizations provide the State agency with actual expenditures of CACFP funds and the amount of meal reimbursement funds retained from unaffiliated centers to support the sponsoring organization's administrative costs. FNS estimates that 1,030 sponsoring organizations of unaffiliated centers will provide their State agency with actual expenditures of CACFP funds and the amount of meal reimbursement funds retained from 1

unaffiliated center to support the sponsoring organization's administrative costs for a total of 1,030 annual records ( $1,030 \times 1 = 1,030$ ). FNS expects it will take an average of 1 hour for the sponsoring organization to report CACFP funds and meal reimbursement funds to the State agency, resulting in an estimated total burden hours of 1,030 ( $1,030 \times 1 = 1,030$ ). FNS estimates that this information requirement will have 1,030 burden hours and responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055, FNS estimates that this final rule results in an increase of both 1,030 burden hours and responses to OMB's inventory due to a program change.

Section 226.6(b) requires that each participating institution submit annual updates to continue its participation (annual certification of information, updated licensing information, and a budget). This replaces the renewal application process in 226.6(f)(2)(i). FNS estimates that there are 18,601 institutions that will each have 1 annual update, for a total of 18,601 updates annually ( $18,601 \times 1 = 18,601$ ). The estimated average number of burden hours per review is 20 minutes (.334 hours), resulting in estimated total burden hours of 6,213 ( $18,601 \times .334 = 6,138$ ). FNS estimates that this information requirement will have 6,213 burden hours and 18,601 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055, FNS estimates that this final rule will reduce the burden hours by 3,088 hours, from 9,301 to 6,213 hours. The number of responses will remain at 18,601 responses. This reduction is due to a program change due to the Final Rule, due to the lower amount of time it will take institutions to submit updates rather than renewal applications.

Sections 226.6(p), 226.17(e), (f), 226.17a(f), 226.19(d), and 226.19a(d) require that each sponsoring organization must enter into permanent agreements with their unaffiliated centers. FNS estimates that there are 1,030 institutions that will each enter into 10 agreements, for a total of 10,300 agreements as a one-time burden ( $1,030 \times 10 = 10,300$ ). The estimated average number of burden hours per review is 30 minutes (0.5 hours), resulting in estimated total burden hours of 5,150 ( $10,300 \times .5 = 5,150$ ). FNS estimates that this information requirement will have 5,150 burden hours and 10,300 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584–0055, FNS estimates that this final rule results in

an increase of 5,150 burden hours and 10,300 responses to OMB's inventory due to a program change.

Section 226.23(e)(1)(vii) states that if a tier II day care home elects to assist in collecting and transmitting the applications to the sponsoring organization, sponsoring organizations must establish procedures to ensure the provider does not review or alter the application. FNS estimates that 540 sponsoring organizations will establish procedures, for a total of 540 records as a one-time burden ( $540 \times 1 = 540$ ). The estimated average number of burden hours per response is 1 hour resulting in estimated total burden hours of 540 ( $540 \times 1 = 540$ ). FNS estimates that this information requirement will have 540 burden hours and responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0055, FNS estimates that the final rule will result in an increase of both 540 burden hours and responses to OMB's inventory due to a program change.

Section 226.6(f)(1)(iv) requires sponsoring organizations of day care homes seeking to carry over administrative funds to submit an amended budget, to include an estimate of requested administrative fund carryover amounts and a description of proposed purpose for which those funds would be obligated or expended. FNS estimates that there are 540 sponsoring organizations that will each file 1 report, for a total of 540 reports ( $540 \times 1 = 540$ ). The estimated average number of burden hours per report is 1 hour, resulting in estimated total burden hours of 540 ( $1 \times 540 = 540$ ). FNS estimates that this information requirement will have 540 burden hours and responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0055, FNS estimates that the final rule will result in an increase of both 540 burden hours and responses to OMB's inventory due to a program change.

Affected Public: Business Level (Facilities)

Section 226.18(b)(12) allows tier II day care homes to assist in collecting meal benefit forms from households and transmitting the forms to the sponsoring organization on the household's behalf. FNS estimates that there are 9,321 tier II day care homes that will each collect and transmit 5.88 forms, for a total of 54,804 forms annually ( $9,321 \times 5.88 = 54,804$ ). The estimated average number of burden hours per form is five minutes (.0835 hours), resulting in estimated total burden hours of 4,576 ( $54,804 \times .0835 = 4,576$ ). FNS estimates that this

information requirement will have 4,576 burden hours and 54,804 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0055, FNS estimates that the final rule will result in an increase of 4,576 burden hours and 54,804 responses to OMB's inventory due to a program change.

*Recordkeeping: CACFP*

Affected Public: State Agencies

Section 226.4(j) requires that State agencies maintain a plan for additional audit funds. FNS estimates that on average there are 8 State agencies that will each file 1 report annually for a total of 8 responses ( $8 \times 1 = 8$ ). The estimated average number of burden hours per response is 30 minutes (0.5 hours) resulting in estimated total burden hours of 4 ( $8 \times 0.5 = 4$ ). FNS estimates that this information requirement will have 4 burden hours and 8 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0055, FNS estimates that the final rule will result in an increase of 4 burden hours and 8 responses to OMB's inventory due to a program change.

Section 226.6(m)(6) requires that State agencies maintain records for reviewing Sponsoring organizations with less than 100 facilities and conduct activities other than the CACFP, or are at risk of having serious management problems every two years. FNS estimates that there are 56 State agencies that will each maintain 20 records for reviewing sponsoring organizations with less than 100 facilities and conducting activities other than the CACFP, for a total of 1,120 records annually ( $56 \times 20 = 1,120$ ). The estimated average number of burden hours per response is 2 hours resulting in estimated total burden hours of 2,240 ( $1,120 \times 2 = 2,240$ ). FNS estimates that this information requirement will have 2,240 burden hours and 1,120 responses. Once this requirement and its associated burden is merged into OMB Control Number 0584-0055, FNS estimates that the final rule will result in an increase of 2,240 burden hours and 1,120 responses due to a program change.

*Annualized Costs*

For the CACFP, given the wide variation in MIS development and maintenance costs across State agencies, FNS estimates a cost of \$50,000 per State agency to perform system upgrades and an additional cost of \$1,000 per State agency for annual maintenance for respondents of this final rule ICR. Therefore, as a result of

the proposals outlined in this final rule, FNS estimates that this collection is expected to have \$2,800,000 in costs related to system upgrades and \$56,000 in annual maintenance. As a result of the provisions in this final rule, FNS estimates that a total of \$2,856,000 in combined system upgrades and annual maintenance costs will be added to the currently approved burden for the CACFP under OMB Control Number 0584-0055.

As a result of the proposals outlined in this final rule, FNS estimates that this new information collection will have 46,997 respondents, 225,205 responses, and 190,924 burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts that follow. Once the ICR for the final rule is approved, the information collection requirements and their associated burden will be merged into the corresponding existing collections. In the case of OMB Control Number 0584-0006, FNS estimates that this final rule will increase the burden by 21,666 responses from the currently approved 47,631,996 responses to 47,653,662 and will decrease the burden by 14,734 burden hours from the currently approved 9,808,454 hours to 9,793,720. It will not change the burden for the number of respondents (it will remain at 115,935). For OMB Control Number 0584-0280, FNS estimates that this final rule will not change the burden for the number of respondents (it will remain at 63,942), but the rule will increase the responses by 63 from 391,795 to 391,858 and will increase the burden by 80.81 burden hours from the currently approved 462,698.97 hours to 462,779.78. For OMB Control Number 0584-0055, FNS estimates that this final rule will increase the burden by 115,171 responses from the currently approved 16,213,093 responses to 16,328,263.76 and will increase the burden by 22,190.724 burden hours from the currently approved 4,213,210.886 hours to 4,235,401.61. It will not change the number of respondents (it will remain at 3,794,949).

*NSLP*

Reporting

*Respondents (Affected Public):* State, Local, and Tribal Government. The identified respondent groups include 56 State agencies and 19,019 School Food Authorities that will participate in this collection.

*Estimated Number of Respondents:* 19,075.

*Estimated Number of Responses per Respondent:* 1.41.



*Estimated Total Annual Responses:* 26,809.

*Estimate Time per Response:* 3.18 hours.

*Estimated Total Annual Burden:* 85,241 hours.

#### Recordkeeping

*Respondents (Affected Public):* State, Local, and Tribal Government. The identified respondent groups include an estimated 56 State agencies and 19,019 School Food Authorities that will participate in this collection.

*Estimated Number of Respondents:* 19,075.

*Estimated Number of Responses per Respondent:* 1.87.

*Estimated Total Annual Responses:* 35,600.

*Estimate Time per Response:* 1.70 hours.

*Estimated Total Annual Burden:* 60,610 hours.

#### Public Notification

*Respondents (Affected Public):* State, Local, and Tribal Government. The identified respondent groups include 56 State agencies that will participate in this collection.

*Estimated Number of Respondents:* 56.

*Estimated Number of Responses per Respondent:* 68.

*Estimated Total Annual Responses:* 3,808.

*Estimate Time per Response:* .25 hours.

*Estimated Total Annual Burden:* 952 hours.

#### SFSP

#### Reporting

*Respondents (Affected Public):* State, Local, and Tribal Government. The identified respondent groups include 53 State agencies and 5 local governments that will participate in this collection.

*Estimated Number of Respondents:* 58.

*Estimated Number of Responses per Respondent:* 1.08.

*Estimated Total Annual Responses:* 62.77.

*Estimate Time per Response:* 1.29 hours.

*Estimated Total Annual Burden:* 80.81 hours.

#### CACFP

#### Reporting

*Respondents (Affected Public):* State, Local, and Tribal Government, For Profit, and Non-Profit Businesses. The respondent groups include 56 State agencies, 3,257 Local governments, 18,601 sponsoring organizations, and

9,321 facilities that will participate in this collection.

*Estimated Number of Respondents:* 31,235.

*Estimated Number of Responses per Respondent:* 5.05.

*Estimated Total Annual Responses:* 157,797.04.

*Estimate Time per Response:* 0.26 hours.

*Estimated Total Annual Burden:* 41,795.72 hours.

#### Recordkeeping

*Respondents (Affected Public):* State, Local, and Tribal Government. The respondent groups include 56 State agencies that will participate in this collection.

*Estimated Number of Respondents:* 56.

*Estimated Number of Responses per Respondent:* 20.14.

*Estimated Total Annual Responses:* 1,128.

*Estimate Time per Response:* 1.99 hours.

*Estimated Total Annual Burden:* 2,244 hours.

**OMB Control Number 0584-0006, “7 CFR Part 210 National School Lunch Program”**

REPORTING

Program rule	CFR citation	Title	Estimated # respondents	Responses per respondents	Total annual records	Estimated avg. # of hours per response	Estimated total hours	Current OMB approved burden hrs	Due to program change	Total difference
<b>State Agency Level</b>										
	210.18(i)(3)	SA notifies SFAs in writing of review findings, corrective actions, deadlines, and potential fiscal action with grounds and right to appeal.	56	68	3,808	8.00	30,464	50,624	-20,160	-20,160
	210.5(d)(3)	SAs submit an annual report to FNS detailing the disbursement of performance-based reimbursement to SFAs (in FPRS).	56	1	56	0.25	14	56	-42	-42
	210.18(c)(2)	SAs with a review cycle longer than 3-years submit a plan to FNS describing the criteria that it will use to identify high-risk SFAs for targeted follow-up reviews.	56	1	56	8.00	448	0	448	448
CN Integrity	210.21(h)	State agencies must complete procurement training requirements annually.	56	1	56	1.00	56	0	56	56
CN Integrity	210.26(b)(4)	SAs must notify SFAs of fine and specific violations or actions that constituted the fine, and of appeal rights and procedures; submit a copy of the notice to FNS.	56	0.09	5.04	3.00	15.12	0	15.12	15.12
State Agency Level Total			56.00	71.09	3,981.04	7.79	30,997.12	50,680.00	-19,683	-19,683

**School Food Authority/Local Education Agency Level**

	210.15(a)(3) & 210.18(j)(2)	SFA submits to the SA a written response to reviews documenting corrective action for Program deficiencies.	3,804	1	3,804	8.00	30,430	50,720	-20,290	-20,290
CN Integrity	210.21(h)	SFAs must complete procurement training requirements annually.	19,019	1	19,019	1.25	23,774	0	23,774	23,774
CN Integrity	210.26(b)(5)	SFAs may appeal SA's determination of violations and fines. SFAs must submit to the State agency any pertinent information, explanation, or evidence addressing the Program violations identified by the SA. Any SFA seeking to appeal the SA determination must follow SA appeal procedures.	5	1	5	8.00	40	0	40	40
School Food Authority Level Total			19,019	1.200	22,828	2.38	54,244	50,720	3,525	3,525
<b>School Level</b>										
Total Reporting Burden			19,075	1.41	26,809	3.18	85,241	101,400	-16,158	(16,158)

RECORDKEEPING

Program rule	CFR citation	Title	Estimated # record-keepers	Records per record-keeper	Total annual records	Estimated avg. # of hours per record	Estimated total hours	Current OMB approved burden hrs	Due to program change—rule	Total difference
<b>State Agency Level</b>										
	210.18(h)(2)(iv)	SA maintains documentation of LEA/SFA compliance with nutrition standards for competitive foods.	56	68	3,808	0.25	952	1,582	-630	-630
State Agency Level Total			56	68	3,808	0.25	952	1,582	-630	-630
<b>School Level</b>										
Total Recordkeeping Burden			19,075	1.41	26,809	3.18	85,241	101,400	-16,158	(16,158)

210.20(b)(6) & 210.18(o)(6)(k),(l),m & 210.23(c).	SA maintains records of all reviews and audits (including Program violations, corrective action, fiscal action and withholding of payments).	56	68	3,808	8.00	30,472	50,638	-20,166	-20,166
210.20(b)(7) & 210.19(c) & 210.18(o).	SA maintains documentation of fiscal action taken to disallow improper claims submitted by SFAs, as determined through claims processing, reviews, and USDA audits.	56	68	3,808	0.50	1,904	3,164	-1,260	-1,260
210.18(c-h)	SA completes and maintains documentation used to conduct Administrative Review.	56	68	3,808	0.50	1,904	3,173	-1,269	-1,269
210.18(c)	SA completes and maintains documentation used to conduct targeted Follow Up Administrative Review.	56	23	1,288	16.00	20,608	0	20,608	20,608
210.15(b)(8)	State agencies must maintain records to document compliance with the procurement training requirements.	56	1	56	0.25	14	0	14	14
210.26(b)	State agencies must maintain records to related fines and specific violations.	56	0.09	5.04	0.25	1.26	0	1.26	1.26
State Agency Level Total		56	296	16,581	3.37	55,855	58,557	-2,702	-2,702

**School Food Authority/Local Education Agency Level**

210.21(h)	School food authorities must maintain document compliance with the procurement training requirements.	19,019	1	19,019	0.25	4,755	0	4,755	4,755
School Food Authority Level Total		19,019	1	19,019	0.25	4,755	0	4,756	4,756

**School Level**

School Level Total		0	0	0	0	0	0	0	0
Total Recordkeeping Burden		19,075	1.87	35,600	1.70	60,610	58,557	2,054	2,054

**PUBLIC NOTIFICATION**

Program rule	CFR citation	Title	Form No.	Estimated # respondents	Responses per respondents	Total annual records	Estimated avg. # of hours per response	Estimated total hours	Current OMB approved burden hrs	Due to program change—final rule	Due to an adjustment	Total difference
				A	B	C = (A * B)	D	E = (C * D)	F			G = E - F
	210.18(m)(1)	SA must post a summary of the most recent administrative review results of SFAs on the SA website and make a copy available upon request.		56	68	3,808	0.25	952.0	1,582.0	-630		-630
State Agency Level Total				56	68.00	3,808	0.25	952	1,582	-630	0	-630
Local Educational Agency/School Food Authority Level Total.				0	#DIV/0!	0	#DIV/0!	0	0	0	0	0
School Level Total										0		0
Total Public Notification Burden				56	68.00	3,808	0.25	952	1,582	-630	0	-630
Grand Total for NSLP Due to Final Rule (as shown in OMB#0584-0610).				19,075	3.47	66,217	2.22	146,803	0	146,803	0	146,803

OMB Control Number 0584-0280, “7  
CFR Summer Food Service Program”

REPORTING

Program rule	CFR citation	Title	Estimated # respondents A	Responses per respondents B	Total annual records C = (A * B)	Estimated avg. # of hours per response D	Estimated total hours E = (C * D)	Current OMB approved burden hrs F	Due to program adjustment	Total difference G = E - F
<b>State/Local/Tribal Governments</b>										
Integrity .....	225.6(i) .....	State agency must consult with FNS prior to taking any action to terminate for convenience.	53.00	1.00	53.00	0.50	26.50	0.00	26.50	26.50
Integrity .....	225.18(k) .....	State agencies must notify SFAs of fines and submit a copy of the notice to FNS.	53.00	0.09	4.77	3.00	14.31	0.00	14.31	14.31
Integrity .....	225.18(k) .....	SFAs may appeal State agency's determination of fines. SFAs must submit to the State agency any pertinent information, explanation, or evidence addressing the Program violations identified by the State agency. Any SFA seeking to appeal the State agency determination must follow State agency appeal procedures.	5.00	1.00	5.00	8.00	40.00	.....	40.00	40.00
State/Local/Tribal Governments Total .....			58	1	63	1.29	81	0	81	80.81
<b>Businesses (Non-profit Institutions and Camps)</b>										
			.....	.....	.....	.....	.....	0	0.00	0.00
			.....	.....	.....	.....	.....	0.00	0	0
			.....	.....	.....	.....	.....	0.00	0	0.00
Total Reporting Burden .....			58	1.08	62.77	1.29	80.81	0.00	81	81

OMB Control Number 0584-0055, “7  
CFR Part 226 Child and Adult Care  
Food Program”

REPORTING

CFR citation	Title	Estimated # respondents	Responses per respondents	Total annual records	Estimated avg. # of hours per response	Estimated total hours	Current OMB approved burden hrs	Due to program change—rulemaking	Total difference
<b>State and Local Government Level</b>									
<b>State Agency</b>									
226.4(i) .....	SAs may submit plan to FNS for additional audit funding .....	8	1	8	4	32	0	32.00	32
226.6(k)(1)(iii) .....	SA to submit, for FNS review, information supporting a request for a reduction in the State's liability, a reconsideration of the State's liability, or an exception to the 60-day deadline, for exceptional circumstances.	5	1	5	4	20	0	20.00	20
226.6(b)(4)(ii) .....	State agency must consult with FNS prior to any taking action to terminate for convenience.	56	1	56	0.50	28	0	28.00	28
226.6(m)(6) .....	SAs to conduct reviews every two years for sponsoring organizations with less than 100 facilities and conduct activities other than the CACFP or are at risk of having serious management problems.	56	20	1120	4.00	4,480	0	4,480.00	4,480
226.7(b)(1) .....	Have procedures in place for annually reviewing at least one month of the sponsoring organization's bank account activity against other associated records to verify that the transactions meet program requirements.	56	1	56	1.00	56	0	56.00	56
226.7(b)(1)(ii) .....	State agency must have procedures for annually reviewing a sponsoring organization's actual expenditures of CACFP funds and the amount of meal reimbursement funds retained from unaffiliated centers.	56	1	56	1.00	56	0	56.00	56
226.25(j) .....	State agencies must notify SFAs of fines and submit a copy of the notice to FNS.	56	0.09	5.04	3.00	15.12	0	15.12	15.12
226.6(b)(2) .....	SAs must review annual certification of an institution's eligibility to continue participating in CACFP (replaces the renewal application process).	56	390	21,840	0.334	7,295	10,920	-3,625.44	-3,625
226.6(m)(3)(ix) .....	The State agency is required to assess the timing of each sponsoring organization's reviews of day care homes and sponsored centers.	56	390	21,840	0.167	3,640	0	3,640.00	3,640
226.6(p) .....	The SA must develop/revise and provide a sponsoring organization agreement between sponsor and facilities, which must have standard provisions.	56	1	56	6.00	336	0	336.00	336
226.12(a) .....	SAs must multiply the appropriate administrative reimbursement rate by the number of day care homes submitting claims for reimbursement during the month, to determine the amount of payment that sponsoring organizations will receive.	56	11	623	0.167	104	0	103.83	104
226.7(g)(2) .....	State agency must review the budget and supporting documentation prior to approval, for sponsoring organizations of day care homes seeking to carry over administrative funds.	56	11	623	1.00	623	0	623.00	623
226.7(i) .....	State agency must establish procedures to recover administrative funds from sponsoring organizations of day care homes that are not properly payable under FNS Instruction 796-2, administrative funds that are in excess of the 10 percent maximum carryover amount, and carryover amounts that are not expended or obligated by the end of the fiscal year following the fiscal year in which they were received.	56	1	56	2.00	112	0	112.00	112
State agency Subtotal .....		56	827.57	46,344	0.36	16,797	10,920	5,877	5,877
<b>Local Governments (Sponsoring Organizations)</b>									
226.7(b)(1) .....	Sponsoring organizations have to annually provide State agencies with bank account activity against other associated records to verify that the transactions meet program requirements.	3,257	1	3,257	0.25	814	0	814	814



REPORTING—Continued

CFR citation	Title	Estimated # respondents	Responses per respondents	Total annual records	Estimated avg. # of hours per response	Estimated total hours	Current OMB approved burden hrs	Due to program change—rulemaking	Total difference
226.7(b)(1)(i)	Sponsoring organizations must provide State agency with actual expenditures of CACFP funds and the amount of meal reimbursement funds retained from unaffiliated centers to support the sponsoring organization's administrative costs. Each participating institution must submit annual updates to continue its participation (annual certification of information, updated licensing information, and a budget).	32	1	32	1	32	0	32	32.00
226.6(b)	Sponsoring organizations must enter into permanent agreements with their unaffiliated centers.	3,257	1	3,257	0.33	1,088	1,629	-541	-540.66
226.6(p), 226.17(e),(f), 226.17a(f), 226.19(d), and 226.19a(d)	Sponsoring organizations must enter into permanent agreements with their unaffiliated centers.	32	10	320	0.50	160	0	160	160.00
226.6(f)(1)(iv)	Sponsoring organizations of day care homes seeking to carry over administrative funds must submit an amended budget, to include an estimate of requested administrative fund carryover amounts and a description of proposed purpose for which those funds would be obligated or expended.	83	1	83	1.00	83	0	83	83.00
226.25	SFAs may appeal the State agency's determination of fines. SFAs must submit to the State agency any pertinent information, explanation, or evidence addressing the Program violations identified by the State agency.	5	1	5	8.00	40	0	40	40.00
226.23(e)(1)(vii)	If a tier II day care home elects to assist in collecting and transmitting the applications to the sponsoring organization, sponsoring organizations must establish procedures to ensure the provider does not review or alter the application.	83	1	83	1.00	83	0	83	83
Local Govt Subtotal		3,257	2.16	7,037	0.33	2,300.09	1,629	671.59	671.59
Reporting burden for State and Local Government Level		3,313	16.11	53,381	0.36	19,096.60	12,549	6,548.10	6,548.10
<b>Businesses Level (Institutions)</b>									
226.7(b)(1)(i)	Sponsoring organizations have to annually provide State agencies with bank account activity against other associated records to verify that the transactions meet program requirements.	18,601	1.00	18,601	0.25	4,650	0	4,650	4,650
226.7(b)	Sponsoring organizations must provide State agency with actual expenditures of CACFP funds and the amount of meal reimbursement funds retained from unaffiliated centers to support the sponsoring organization's administrative costs. Each participating institution must submit annual updates to continue its participation (annual certification of information, updated licensing information, and a budget).	1,030	1	1,030	1	1,030	0	1,030	1,030.00
226.6(b)	Sponsoring organizations must enter into permanent agreements with their unaffiliated centers.	18,601	1	18,601	0.33	6,213	9,301	(3,088)	(3,088)
226.6(p), 226.17(e),(f), 226.17a(f), 226.19(d), and 226.19a(d)	Sponsoring organizations must enter into permanent agreements with their unaffiliated centers.	1,030	10	10,300	0.50	5,150	0	5,150	5,150
226.23(e)(1)(vii)	If a tier II day care home elects to assist in collecting and transmitting the applications to the sponsoring organization, sponsoring organizations must establish procedures to ensure the provider does not review or alter the application.	540	1	540	1.00	540	0	540	540
226.6(f)(1)(iv)	Sponsoring organizations of day care homes seeking to carry over administrative funds must submit an amended budget, to include an estimate of requested administrative fund carryover amounts and a description of proposed purpose for which those funds would be obligated or expended.	540	1	540	1.00	540	0	540	540
Total Burden for Businesses (Sponsoring Organizations)		18,601	2.67	49,612.00	0.37	18,122.98	9,301	8,822.48	8,822.48

Business Level (Facilities)									
226.18(b)(12)	Tier II day care homes may assist in collecting meal benefit forms from households and transmitting the forms to the sponsoring organization on the household's behalf.	9,321	5.88	54,804	0.08	4,576	0	4,576	4,576
Total Burden for Businesses (Facilities)		9,321	5.88	54,804.00	0.08	4,576.13	0.00	4,576.13	4,576.13
Total for Businesses		27,922	3.74	104,416	.217	22,699.11	9,301	13,398.61	13,398.61
Total Reporting Burden		31,235	5.05	157,797.04	0.26	41,795.72	21,849	19,946.72	19,946.72

**RECORDKEEPING**

Program rule	Title	Estimated # recordkeepers	Records per recordkeeper	Total annual records	Estimated avg. # of hours per record	Estimated total hours	Current OMB approved burden hrs	Due to program change—rulemaking	Total difference
<b>State and Local Government Level</b>									
<b>State Agency</b>									
226.4(j)	SAs to maintain a plan for additional audit funds	8	1	8	0.50	4	0	4	4
226.6(m)(6)	Maintain records for reviewing Sponsoring organizations with less than 100 facilities and conduct activities other than the CACFP, or are at risk of having serious management problems every two years.	56	20	1,120	2	2,240	0	2,240	2,240
State agency subtotal		56	20.14	1,128	1.99	2,244	0	2,244	2,244
<b>Local Governments (Sponsoring Organizations)</b>									
Total Recordkeeping Burden		56	20.14	1,128	1.99	2,244.00	0.00	2,244.00	2,244.00
Grand Total for CACFP Due to Final Rule (as shown in OMB#0584-0610)		31,235	5	158,925.04	.28	44,039.72	0	44,039.72	44,039.72

	OMB #0584–0280 due to final rule	Once merged with OMB #0584–0280
Total No. Respondents .....	58	63,942
Average No. Responses Per Respondent .....	1.08	6.13
Total Annual Responses .....	63	391,858
Average Hours Per Response .....	1.29	1,181
Total Burden Hours .....	80.81	462,779.78
Current OMB Inventory .....	0	462,698.97
Difference Due To Rulemaking .....	80.81	80.81

  

	OMB #0584–0055 due to final rule	Once merged with OMB #0584–0055
Total No. Respondents .....	31,235	3,794,949
Average No. Responses Per Respondent .....	5	4
Total Annual Responses .....	158,925.04	16,328,263.76
Average Hours Per Response .....	0.28	.26
Total Burden Hours .....	44,039.72	4,235,401.61
Current OMB Inventory .....	0	4,213,210.886
Difference Due To Rulemaking .....	44,039.72	22,190.72

*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**

*7 CFR Part 210*

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

*7 CFR Part 215*

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements.

*7 CFR Part 220*

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

*7 CFR Part 225*

Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

*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.

*7 CFR Part 235*

Administrative practice and procedure, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR parts 210, 215, 220, 225, 226, and 235 are amended as follows:

**PART 210—NATIONAL SCHOOL LUNCH PROGRAM**

■ 1. The authority citation for part 210 continues to read as follows:

**Authority:** 42 U.S.C. 1751–1760, 1779.

■ 2. Amend § 210.2 by adding, in alphabetical order, the definition of “Fixed-price contract” to read as follows:

**§210.2 Definitions.**

\* \* \* \* \*  
*Fixed-price contract* means a contract that charges a fixed cost per meal, or a fixed cost for a certain time period. Fixed-price contracts may include an economic price adjustment tied to a standard index.

\* \* \* \* \*  
 ■ 3. In § 210.5, revise paragraphs (d)(2) and (3) to read as follows:

**§210.5 Payment process to States.**

\* \* \* \* \*  
 (d) \* \* \*  
 (2) *Quarterly report.* Each State agency administering the National School Lunch Program must submit to FNS a quarterly Financial Status Report (FNS–777) on the use of Program funds.

Such reports must be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter.

(3) *End of year reports.* (i) Each State agency must submit an annual report detailing the disbursement of performance-based cash assistance described in § 210.4(b)(1). The report must be submitted no later than 30 days after the end of each fiscal year. The report must include the total number of school food authorities in the State and the names of certified school food authorities. If all school food authorities in the State have been certified, the State agency is no longer required to submit the report.

(ii) Each State agency must submit a final Financial Status Report (FNS–777) for each fiscal year. This final fiscal year grant closeout report must be postmarked or submitted to FNS within 120 days after the end of each fiscal year or part thereof that the State agency administered the Program. Obligations must be reported only for the fiscal year in which they occur. FNS will not be responsible for reimbursing Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred. Grant closeout procedures are to be carried out in accordance with 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.

■ 4. In § 210.7, revise paragraph (d) to read as follows:

**§210.7 Reimbursement for school food authorities.**

\* \* \* \* \*

(d) *Performance-based cash assistance.* The State agency must provide performance-based cash

assistance as authorized under § 210.4(b)(1) for lunches served in school food authorities certified by the State agency to be in compliance with meal pattern and nutrition requirements set forth in § 210.10 and, if the school food authority participates in the School Breakfast Program (7 CFR part 220), § 220.8 or § 220.23 of this chapter, as applicable. State agencies must establish procedures to certify school food authorities for performance-based cash assistance in accordance with guidance established by FNS. Such procedures must ensure State agencies:

- (1) Make certification procedures readily available to school food authorities and provide guidance necessary to facilitate the certification process.
- (2) Require school food authorities to submit documentation to demonstrate compliance with meal pattern requirements set forth in § 210.10 and § 220.8 of this chapter, as applicable. Such documentation must reflect meal service at or about the time of certification.

(3) State agencies must review certification documentation submitted by the school food authority to ensure compliance with meal pattern requirements set forth in § 210.10, or § 220.8 of this chapter, as applicable. For certification purposes, State agencies should consider any school food authority compliant:

(i) If when evaluating daily and weekly range requirements for grains and meat/meat alternates, the certification documentation shows compliance with the daily and weekly minimums for these two components, regardless of whether the school food authority has exceeded the maximums for the same components.

(ii) If when evaluating the service of frozen fruit, the school food authority serves products that contain added sugar.

(4) Certification procedures must ensure that no performance-based cash assistance is provided to school food authorities for meals served prior to October 1, 2012.

(5) Within 60 calendar days of a certification submission or as otherwise authorized by FNS, review submitted materials and notify school food authorities of the certification determination, the date that performance-based cash assistance is effective, and consequences for non-compliance.

(6) Disburse performance-based cash assistance for all lunches served beginning with the start of certification provided that documentation reflects meal service in the calendar month the

certification materials are submitted or, in the month preceding the calendar month of submission.

\* \* \* \* \*

■ 5. In § 210.16, add paragraph (c)(4) to read as follows:

**§ 210.16 Food service management companies.**

\* \* \* \* \*

(c) \* \* \*

(4) Provisions in part 250, subpart D of this chapter must be included to ensure the value of donated foods, *i.e.*, USDA Foods, are fully used in the nonprofit food service and credited to the nonprofit school food service account.

\* \* \* \* \*

■ 6. In § 210.18:

- a. Amend paragraph (b) by revising the definitions of “Administrative review” and “General areas”;
- b. Revise paragraphs (c), (f), (g) introductory text, (h) introductory text, and (h)(1);
- c. Add paragraph (h)(2)(xi);
- d. Revise paragraph (l) introductory text and paragraph (l)(2); and
- e. Revise the first sentence of paragraph (p) introductory text and paragraph (p)(1).

The addition and revisions read as follows:

**§ 210.18 Administrative Reviews.**

\* \* \* \* \*

(b) \* \* \*

*Administrative reviews* means the comprehensive evaluation of all school food authorities participating in the programs specified in paragraph (a) of this section. It includes a review of both critical and general areas in accordance with paragraphs (g) and (h) of this section, as applicable for each reviewed program. With FNS approval, the administrative review may include other areas of program operations determined by the State agency.

\* \* \* \* \*

*General areas* means the areas of review specified in paragraph (h) of this section. These areas include free and reduced-price process, civil rights, school food authority on-site monitoring, reporting and recordkeeping, food safety, competitive food services, water, program outreach, resource management, Buy American, and other areas identified by FNS.

\* \* \* \* \*

(c) *Review cycle.* State agencies must conduct administrative reviews of all school food authorities participating in the National School Lunch Program (including Afterschool Snacks and the Seamless Summer Option) and the

School Breakfast Program at least once during a 5-year review cycle, provided that each school food authority is reviewed at least once every 6 years, depending on review cycle observed. At a minimum, the on-site portion of the administrative review must be completed during the school year in which the review began.

(1) *Targeted follow-up reviews.* A State agency that reviews school food authorities on a cycle longer than 3 years must identify school food authorities that are high-risk to receive a targeted follow-up review. A State agency must develop and receive FNS approval of a plan to identify school food authorities that meet the high-risk criteria.

(2) *High-risk criteria for targeted follow-up reviews.* At a minimum, a State plan should identify as high-risk those school food authorities that during the most recent administrative review conducted in accordance with this § 210.18 had one or more of the following risk factors as determined by the State Agency: a 10 percent or greater certification and benefit issuance error rate; incomplete verification for the review year; or one or more significant or systemic errors in Performance Standard 1 as defined at (g)(1) of this section, Performance Standard 2 as defined at paragraph (g)(2) of this section, or allowable costs.

(3) *Timing and scope of targeted follow-up reviews.* Within two years of the review, high-risk school food authorities must receive a targeted follow-up review. Targeted follow-up reviews must include the areas of significant or systemic error identified in the previous review, and may include other areas at the discretion of the State agency. The State agency may conduct targeted follow-up reviews in the same school year as the administrative review, and may conduct any additional reviews at its discretion.

\* \* \* \* \*

(f) *Scope of review.* During the course of an administrative review for the National School Lunch Program and the School Breakfast Program, the State agency must monitor compliance with the critical and general areas in paragraphs (g) and (h) of this section, respectively. Selected critical and general areas must be monitored when reviewing the National School Lunch Program’s Afterschool Snacks and the Seamless Summer Option, the Special Milk Program, and the Fresh Fruit and Vegetable Program, as applicable and as specified in the FNS Administrative Review Manual. State agencies may add

additional review areas with FNS approval.

(1) *Review forms.* State agencies must use the administrative review forms, tools and workbooks prescribed by FNS.

(2) *Timeframes covered by the review.*

(i) The timeframes covered by the administrative review include the review period and the day of review, as defined in paragraph (b) of this section.

(ii) Subject to FNS approval, the State agency may conduct a review early in the school year, prior to the submission of a Claim for Reimbursement. In such cases, the review period must be the prior month of operation in the current school year, provided that such month includes at least 10 operating days.

(3) *Audit results.* The State agency may use any recent and currently applicable results from Federal, State, or local audit activity to meet FNS monitoring requirements. Such results may be used only when they pertain to the reviewed school(s) or the overall operation of the school food authority, when they are relevant to the review period, and when they adhere to audit standards contained in 2 CFR part 200, subpart F. The State agency must document the source and the date of the audit. The content of local level audits activity requires the approval of FNS to ensure that these audits align with Federal audit standards.

(4) *Completion of review requirements outside the administrative review.* State agencies may, with FNS approval, omit specific, redundant areas of the administrative review, when sufficient oversight is conducted outside of the administrative review.

(5) *Error reduction strategies.* State agencies may omit designated areas of review, in part or entirely, where a school food authority or State agency has implemented FNS-approved error reduction strategies or utilized FNS-approved monitoring efficiencies.

(g) *Critical areas of review.* The performance standards listed in this paragraph are directly linked to meal access and reimbursement, and to the meal pattern and nutritional quality of the reimbursable meals offered. These critical areas must be monitored by the State agency when conducting administrative reviews of the National School Lunch Program and the School Breakfast Program. Selected aspects of these critical areas must also be monitored, as applicable, when conducting administrative reviews of the National School Lunch Program's Afterschool Snacks and the Seamless Summer Option, and of the Special Milk Program. State agencies may omit designated critical areas of review, in part or entirely, where school food

authority or State agency has implemented FNS-specified error reduction strategies or utilized FNS-specified monitoring efficiencies.

\* \* \* \* \*

(h) *General areas of review.* The general areas listed in this paragraph reflect requirements that must be monitored by the State agency when conducting administrative reviews of the National School Lunch Program and the School Breakfast Program. Selected aspects of these general areas must also be monitored, as applicable and as specified in the FNS Administrative Review Manual, when conducting administrative reviews of the National School Lunch Program's Afterschool Snacks and Seamless Summer Option, the Fresh Fruit and Vegetable Program, and the Special Milk Program. State agencies may omit designated general areas of review, in part or entirely, where the school food authority or State agency has implemented FNS-specified error reduction strategies or utilized FNS-specified monitoring efficiencies. State agencies may omit designated general areas of review, in part or entirely, where the school food authority or State agency has implemented FNS-specified error reduction strategies or utilized FNS-specified monitoring efficiencies. The general areas of review must include, but are not limited to, the following:

(1) *Resource management.* The State agency must conduct an assessment of the school food authority's nonprofit school food service account to evaluate the risk of noncompliance with resource management requirements. If risk indicators show that the school food authority is at high risk for noncompliance with resource management requirements, the State agency must conduct a comprehensive review including, but not limited to, the following areas using procedures specified in the FNS Administrative Review Manual.

\* \* \* \* \*

(2) \* \* \*

(xi) *Buy American.* The State agency must ensure that the school food authority complies with the Buy American requirements set forth in § 210.21(d) and 7 CFR 220.16(d), as specified in the FNS Administrative Review Manual.

\* \* \* \* \*

(l) *Fiscal action.* The State agency must take fiscal action for all Performance Standard 1 violations and specific Performance Standard 2 violations identified during an administrative review, including targeted follow-up review or other

reviews, as specified in this section. Fiscal action must be taken in accordance with the principles in § 210.19(c) and the procedures established in the FNS Administrative Review Manual. The State agency must follow the fiscal action formula prescribed by FNS to calculate the correct entitlement for a school food authority or a school. While there is no fiscal action required for general area violations, the State agency has the ability to withhold funds for repeat or egregious violations occurring in the majority of the general areas as described in paragraph (k)(1)(iv) of this section.

\* \* \* \* \*

(2) *Performance Standard 2 violations.* Fiscal action for Performance Standard 2 violations applies as follows:

(i) For missing food components or missing production records cited under paragraph (g)(2) of this section, the State agency must apply fiscal action.

(ii) For repeated violations involving food quantities, whole grain-rich foods, milk type, and vegetable subgroups cited under paragraph (g)(2) of this section, the State agency has discretion to apply fiscal action as follows:

(A) If the meals contain insufficient quantities of the required food components, the deficient meals may be disallowed and reclaimed.

(B) If no whole grain-rich foods are offered during the week of review, meals for up to the entire week of review may be disallowed and reclaimed.

(C) If insufficient whole grain-rich foods are offered during the week of review, meals for up to the entire week of review may be disallowed and/or reclaimed.

(D) If an unallowable milk type is offered, or no milk variety is offered, the deficient meals may be disallowed and reclaimed.

(E) If one vegetable subgroup is not offered over the course of the week of review, meals for up to the entire week of review may be disallowed and reclaimed.

(F) If a weekly vegetable subgroup is offered in insufficient quantity to meet the weekly vegetable subgroup requirement, meals for one day of the week of review may be disallowed and reclaimed.

(G) If the amount of juice offered exceeds the weekly limitation, meals for up to the entire week of review may be disallowed and/or reclaimed.

(iii) For repeated violations of calorie, saturated fat, sodium, and trans fat dietary specifications cited under paragraph (g)(2)(ii) of this section, the

State agency has discretion to apply fiscal action to the reviewed school as follows:

(A) If the average meal offered over the course of the week of review does not meet one of the dietary specifications, meals for the entire week of review may be disallowed and reclaimed; and

(B) Fiscal action is limited to the school selected for the targeted menu review and must be supported by a nutrient analysis of the meals at issue using USDA-approved software.

(iv) The following conditions must be met prior to applying fiscal action as described in paragraphs (l)(2)(ii) and (iii) of this section:

(A) Technical assistance has been given by the State agency;

(B) Corrective action has been previously required and monitored by the State agency; and

(C) The school food authority remains noncompliant with the meal requirements established in part 210 and part 220 of this chapter.

\* \* \* \* \*

(p) \* \* \* Except for FNS-conducted reviews authorized under § 210.29(d)(2), each State agency must establish an appeal procedure to be followed by a school food authority requesting a review of a denial of all or a part of the Claim for Reimbursement, withholding payment arising from administrative or follow-up review activity conducted by the State agency under this § 210.18, or fines established under § 210.26, or § 215.15 or § 220.18 of this chapter.

\* \* \*

(1) The written request for a review must be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement, withholding of payment, or fines established under § 210.26, or § 215.15 or § 220.18 of this chapter, and the State agency must acknowledge the receipt of the request for appeal within 10 calendar days;

\* \* \* \* \*

■ 7. In § 210.19, revise paragraph (a)(5) to read as follows:

**§ 210.19 Additional Responsibilities.**

(a) \* \* \*

(5) *Food service management companies.* (i) The State agency must annually review and approve each contract and contract amendment, including all supporting documentation, between any school food authority and food service management company before implementation of the contract by either party to ensure compliance with all the provisions and standards set forth in this part.

(A) When the State agency develops a prototype contract for use by the school food authority that meets the provisions and standards set forth in this part, this annual review may be limited to changes made to that contract.

(B) The State agency may establish due dates for submission of the contract or contract amendment documents.

(ii) The State agency must perform a review of each school food authority that contracts with a food service management company, at least once during each 5-year period. The reviews must examine the school food authority's compliance with § 210.16 of this part.

(iii) The State agency may require all food service management companies to register with the State agency prior to contracting for food service with any school food authority in the State.

(iv) State agencies must provide assistance to school food authorities upon request to assure compliance with the requirements for contracting with a food service management company.

\* \* \* \* \*

**§ 210.20 [Amended]**

■ 8. In § 210.20, amend paragraph (b)(14) by removing the term “§ 235.11(g)” and adding in its place the term “§ 235.11(h)”.

■ 9. In § 210.21 add paragraph (h) to read as follows:

**§ 210.21 Procurement.**

\* \* \* \* \*

(h) *Procurement training.* (1) State directors of school nutrition programs, State directors of distributing agencies, and school nutrition program directors, management, and staff tasked with National School Lunch Program procurement responsibilities must complete annual training on Federal procurement standards annually.

(2) Procurement training may count towards the professional standards training standards at § 210.30(g) of this part and § 235.11(h) of this chapter.

(3) State agencies and school food authorities must retain records to document compliance with the requirement in this section.

■ 10. Revise § 210.26 to read as follows:

**§ 210.26 Penalties and fines.**

(a) *Penalties.* Whomever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part whether received directly or indirectly from the Department will, if such funds, assets, or property are of a value of \$100 or more, be fined no more than \$25,000 or imprisoned not more than 5 years or

both; or if such funds, assets, or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than 1 year or both. Whomever receives, conceals, or retains for personal use or gain, funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, will be subject to the same penalties.

(b) *Fines.* (1) The State agency may establish a fine against any school food authority when it has determined that the school food authority or a school under its agreement has:

(i) Failed to correct severe mismanagement of this Program or a Child Nutrition Program under parts 225 or 226 of this chapter;

(ii) Disregarded a Program requirement of which the school food authority or school had been informed; or

(iii) Failed to correct repeated violations of Program requirements under this part or under parts 225 or 226 of this chapter.

(2) FNS may direct the State agency to establish a fine against any school food authority when it has determined that the school food authority or school meets the criteria set forth under paragraph (b)(1) of this section.

(3) Funds used to pay fines established under this paragraph must be derived from non-Federal sources. The State agency must calculate the fine based on the amount of Program reimbursement earned by the school food authority or school for the most recent fiscal year for which full year data is available, provided that the fine does not exceed the equivalent of:

(i) For the first fine, 1 percent of the amount of meal reimbursement earned for the fiscal year;

(ii) For the second fine, 5 percent of the amount of meal reimbursement earned for the fiscal year; and

(iii) For the third or subsequent fine, 10 percent of the amount of meal reimbursement earned for the fiscal year.

(4) The State agency must inform FNS at least 30 days prior to establishing the fine under this paragraph. The State agency must send the school food authority written notification of the fine established under this paragraph and provide a copy of the notification to FNS. The notification must:

(i) Specify the violations or actions which constitute the basis for the fine and indicate the amount of the fine;

(ii) Inform the school food authority that it may appeal the fine and advise

the school food authority of the appeal procedures established under § 210.18(p);

(iii) Indicate the effective date and payment procedures should the school food authority not exercise its right to appeal within the specified timeframe.

(5) Any school food authority subject to a fine under paragraph (b)(1) of this section may appeal the State agency's determination. In appealing a fine, the school food authority must submit to the State agency any pertinent information, explanation, or evidence addressing the Program violations identified by the State agency. Any school food authority seeking to appeal the State agency determination must follow State agency appeal procedures.

(6) The decision of the State agency review official is final and not subject to further administrative or judicial review. Failure to pay a fine established under this paragraph may be grounds for suspension or termination.

(7) Money received by the State agency as a result of a fine established under this paragraph against a school food authority and any interest charged in the collection of these fines must be remitted to FNS, and then remitted to the United States Treasury.

■ 11. In § 210.30, add paragraph (g)(3) to read as follows:

**§ 210.30 School nutrition program professional standards.**

\* \* \* \* \*

(g) \* \* \*

(3) Each employee tasked with Program procurement has completed annual procurement training, as required under § 210.21(h), by the end of each school year.

■ 12. Revise § 210.32 to read as follows:

**§ 210.32 Program information.**

Persons seeking information about this Program should contact their State administering agency or the appropriate FNSRO. The FNS website has contact information for State agencies at <https://www.fns.usda.gov/contacts> and FNSROs at <https://www.fns.usda.gov/fns-regional-offices>.

**PART 215—SPECIAL MILK PROGRAM**

■ 13. The authority citation for part 215 continues to read as follows:

**Authority:** 42 U.S.C. 1772 and 1779.

■ 14. Revise § 215.15 to read as follows:

**§ 215.15 Withholding payments and establishing fines.**

(a) *Withholding payments.* In accordance with Departmental regulations 2 CFR 200.338 through

200.342, the State agency must withhold Program payments, in whole or in part, from any school food authority which has failed to comply with the provisions of this part. Program payments must be withheld until the school food authority takes corrective action satisfactory to the State agency, or gives evidence that such corrective actions will be taken, or until the State agency terminates the grant in accordance with § 215.16.

Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any milk served in accordance with the provisions of this part during the period the payments were withheld.

(b) *Fines.* (1) The State agency may establish a fine against any school food authority when it has determined that the school food authority or a school under its agreement has:

(i) Failed to correct severe mismanagement of the Program;

(ii) Disregarded a Program requirement of which the school food authority or school had been informed; or

(iii) Failed to correct repeated violations of Program requirements.

(2) FNS may direct the State agency to establish a fine against any school food authority when it has determined that the school food authority or school meets the criteria set forth under paragraph (b)(1) of this section.

(3) Funds used to pay a fine established under this paragraph must be derived from non-Federal sources. The State agency must calculate the fine based on the amount of Program reimbursement earned by the school food authority or school for the most recent fiscal year for which full year data is available, provided that the fine does not exceed the equivalent of:

(i) For the first fine, 1 percent of the amount of reimbursement for milk earned for the fiscal year;

(ii) For the second fine, 5 percent of the amount of reimbursement for milk earned for the fiscal year; and

(iii) For the third or subsequent fine, 10 percent of the amount of reimbursement for milk earned for the fiscal year.

(4) The State agency must inform FNS at least 30 days prior to establishing a fine under this paragraph. The State agency must send the school food authority written notification of the fine established under this paragraph and provide a copy of the notification to FNS. The notification must:

(i) Specify the violations or actions which constitute the basis for the fine and indicate the amount of the fine;

(ii) Inform the school food authority that it may appeal the fine and advise

the school food authority of the appeal procedures established under § 210.18(p) of this chapter;

(iii) Indicate the effective date and payment procedures should the school food authority not exercise its right to appeal within the specified timeframe.

(5) Any school food authority subject to a fine under paragraph (b)(1) of this section may appeal the State agency's determination. In appealing a fine, the school food authority must submit to the State agency any pertinent information, explanation, or evidence addressing the Program violations identified by the State agency. Any school food authority seeking to appeal the State agency determination must follow State agency appeal procedures.

(6) The decision of the State agency review official is final and not subject to further administrative or judicial review. Failure to pay a fine established under this paragraph may be grounds for suspension or termination.

(7) Money received by the State agency as a result of a fine established under this paragraph against a school food authority and any interest charged in the collection of these fines must be remitted to FNS, and then remitted to the United States Treasury.

■ 15. Revise § 215.17 to read as follows:

**§ 215.17 Program information.**

Persons seeking information about this Program should contact their State administering agency or the appropriate FNSRO. The FNS website has contact information for State agencies at <https://www.fns.usda.gov/contacts> and FNSROs at <https://www.fns.usda.gov/fns-regional-offices>.

**PART 220—SCHOOL BREAKFAST PROGRAM**

■ 16. The authority citation for part 220 continues to read as follows:

**Authority:** 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 17. In § 220.2, add in alphabetical order the definition "Fixed-price contract" to read as follows:

**§ 220.2 Definitions.**

\* \* \* \* \*

*Fixed-price contract* means a contract that charges a fixed cost per meal, or a fixed cost for a certain time period. Fixed-price contracts may include an economic price adjustment tied to a standard index.

\* \* \* \* \*

■ 18. In § 220.7, add paragraph (d)(3)(iv) to read as follows:

**§ 220.7 Requirements for participation.**

\* \* \* \* \*



(d) \* \* \*

(3) \* \* \*

(iv) Provisions in part 250, subpart D of this chapter must be included to ensure the value of donated foods, *i.e.*, USDA Foods, are fully used in the nonprofit food service and credited to the nonprofit school food service account.

\* \* \* \* \*

■ 19. Revise § 220.18 to read as follows:

**§ 220.18 Withholding payments and establishing fines.**

(a) *Withholding payments.* In accordance with 2 CFR 200.338 through 342, the State agency must withhold Program payments, in whole or in part, from any school food authority which has failed to comply with the provisions of this part. Program payments must be withheld until the school food authority takes corrective action that is satisfactory to the State agency, or gives evidence that such corrective actions will be taken, or until the State agency terminates the grant in accordance with § 220.19. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any breakfasts served in accordance with the provisions of this part during the period the payments were withheld.

(b) *Fines.* (1) The State agency may establish a fine against any school food authority when it has determined that the school food authority or a school under its agreement has:

(i) Failed to correct severe mismanagement of the Program or a Child Nutrition Program under parts 225 or 226 of this chapter;

(ii) Disregarded a Program requirement of which the school food authority or school had been informed; or

(iii) Failed to correct repeated violations of Program requirements under this part or under parts 225 or 226 of this chapter.

(2) FNS may direct the State agency to establish a fine against any school food authority when it has determined that the school food authority or school meets the criteria set forth under paragraph (b)(1) of this section.

(3) Funds used to pay a fine established under this paragraph must be derived from non-Federal sources. The State agency must calculate the fine based on the amount of Program reimbursement earned by the school food authority or school for the most recent fiscal year for which full year data are available, provided that the fine does not exceed the equivalent of:

(i) For the first fine, 1 percent of the amount of meal reimbursement earned for the fiscal year;

(ii) For the second fine, 5 percent of the amount of meal reimbursement earned for the fiscal year; and

(iii) For the third or subsequent fine, 10 percent of the amount of meal reimbursement earned for the fiscal year.

(4) The State agency must inform FNS at least 30 days prior to establishing a fine under this paragraph. The State agency must send the school food authority written notification of the fine established under this paragraph and provide a copy of the notification to FNS. The notification must:

(i) Specify the violations or actions which constitute the basis for the fine and indicate the amount of the fine;

(ii) Inform the school food authority that it may appeal the fine, and advise the school food authority of the appeal procedures established under § 210.18(p) of this chapter;

(iii) Indicate the effective date and payment procedures should the school food authority not exercise its right to appeal within the specified timeframe.

(5) Any school food authority subject to a fine under paragraph (b)(1) of this section may appeal the State agency's determination. In appealing a fine, the school food authority must submit to the State agency any pertinent information, explanation, or evidence addressing the Program violations identified by the State agency. Any school food authority seeking to appeal the State agency determination must follow State agency appeal procedures.

(6) The decision of the State agency review official is final and not subject to further administrative or judicial review. Failure to pay a fine established under this paragraph may be grounds for suspension or termination.

(7) Money received by the State agency as a result of a fine established under this paragraph against a school food authority and any interest charged in the collection of these fines must be remitted to FNS, and then remitted to the United States Treasury.

■ 20. Revise § 220.21 to read as follows:

**§ 220.21 Program information.**

Persons seeking information about this Program should contact their State administering agency or the appropriate FNSRO. The FNS website has contact information for State agencies at <https://www.fns.usda.gov/contacts> and FNSROs at <https://www.fns.usda.gov/fns-regional-offices>.

**PART 225—SUMMER FOOD SERVICE PROGRAM**

■ 21. The authority citation for part 225 continues to read as follows:

**Authority:** Secs. 9, 13, and 14, Richard B. Russell National School Lunch Act, as amended, 42 U.S.C. 1758, 1761 and 1762a.

■ 22. In § 225.2, add in alphabetical order a definition for "Termination for convenience" to read as follows:

**§ 225.2 Definitions.**

\* \* \* \* \*

*Termination for convenience* means:

(1) Termination of a State agency's participation in the Program in whole, or in part, when FNS and the State agency agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds; or

(2) Termination of a permanent operating agreement by a State agency or sponsor due to considerations unrelated to either party's performance of Program responsibilities under the agreement.

\* \* \* \* \*

■ 23. In § 225.6, revise paragraph (c)(1)(i) and paragraph (i) introductory text to read as follows:

**§ 225.6 State agency responsibilities.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) The sponsor must submit a written application to the State agency for participation in the Program. The State agency may use the application form developed by FNS, or develop its own application form, provided that the form requests the full legal name, any previously used names, mailing address; date of birth of the sponsor's responsible principals, which include the executive director and board chair; and the sponsor's Federal Employer Identification Number (FEIN) or Unique Entity Identifier (UEI). Application to sponsor the Program must be made on a timely basis within the deadlines established under paragraph (b)(1) of this section.

\* \* \* \* \*

(i) *State-Sponsor agreement.* A sponsor approved for participation in the Program must enter into a permanent written agreement with the State agency. The existence of a valid permanent agreement does not limit the State agency's ability to terminate the agreement, as provided under § 225.11(c). The State agency must terminate the sponsor's agreement whenever a sponsor's participation in the Program ends. The State agency or sponsor may terminate the agreement at its convenience for considerations unrelated to the sponsor's performance of Program responsibilities under the agreement. However, any action

initiated by the State agency to terminate an agreement for its convenience requires prior consultation with FNS. All sponsors must agree in writing to:

\* \* \* \* \*

■ 24. In § 225.18, add paragraph (k) to read as follows:

**§ 225.18 Miscellaneous administrative provisions.**

\* \* \* \* \*

(k) *Fines.* (1) A sponsor that is a school food authority may be subject to fines. The State agency may establish an assessment when it has determined that the sponsor or its site has:

- (i) Failed to correct severe mismanagement of the Program;
- (ii) Disregarded a Program requirement of which the sponsor or its site had been informed; or
- (iii) Failed to correct repeated violations of Program requirements.

(2) FNS may direct the State agency to establish a fine against any sponsor when it has determined that the sponsor or its site has committed one or more acts under paragraph (k)(1) of this section.

(3) Funds used to pay a fine established under this paragraph must be derived from non-Federal sources. In calculating an assessment, the State agency must calculate the fine based on the amount of Program reimbursement earned by the sponsor or its site for the most recent fiscal year for which full year data is available, provided that the fine does not exceed the equivalent of:

- (i) For the first fine, 1 percent of the amount of meal reimbursement earned for the fiscal year;
- (ii) For the second fine, 5 percent of the amount of meal reimbursement earned for the fiscal year; and
- (iii) For the third or subsequent fine, 10 percent of the amount of meal reimbursement earned for the fiscal year.

(4) The State agency must inform FNS at least 30 days prior to establishing the fine under this paragraph. The State agency must send the sponsor written notification of the fine established under this paragraph and provide a copy of the notification to FNS. The notification must:

- (i) Specify the violations or actions which constitute the basis for the fine and indicate the amount of the fine;
- (ii) Inform the institution that it may appeal the fine and advise the sponsor of the appeal procedures established under § 225.13;
- (iii) Indicate the effective date and payment procedures should the sponsor not exercise its right to appeal within the specified timeframe.

(5) Any sponsor subject to a fine under paragraph (k)(1) of this section may appeal the State agency's determination. In appealing a fine, the sponsor must submit to the State agency any pertinent information, explanation, or evidence addressing the Program violations identified by the State agency. Any sponsor seeking to appeal the State agency determination must follow State agency appeal procedures.

(6) The decision of the State agency review official is final and not subject to further administrative or judicial review. Failure to pay a fine established under this paragraph may be grounds for suspension or termination.

(7) Money received by the State agency as a result of a fine established under this paragraph against a sponsor and any interest charged in the collection of these fines must be remitted to FNS, and then remitted to the United States Treasury.

■ 25. Revise § 225.19 to read as follows:

**§ 225.19 Program information.**

Persons seeking information about this Program should contact their State administering agency or the appropriate FNSRO. The FNS website has contact information for State agencies at <https://www.fns.usda.gov/contacts> and FNSRO at <https://www.fns.usda.gov/fns-regional-offices>.

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

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

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

- 27. In § 226.2:
  - a. Revise the definitions for “Facility” and “New institution”;
  - b. Add in alphabetical order definitions for “Participating institution”;
  - c. Revise the definition of “Renewing institution”;
  - d. Add the definition of “Sponsored center”;
  - e. Revise the definitions for “Sponsoring organization”, “TANF recipient”, and “Termination for convenience”.

The revisions and additions read as follows:

**§ 226.2 Definitions.**

\* \* \* \* \*

*Facility* means a sponsored center or a day care home.

\* \* \* \* \*

*New institution* means a sponsoring organization or an independent center

making an application to participate in the Program or applying to participate in the Program after a lapse in participation.

\* \* \* \* \*

*Participating institution* means a sponsoring organization or an independent center, including a renewing institution, that holds a current agreement with the State agency to operate the Program.

\* \* \* \* \*

*Renewing institution* means a sponsoring organization or an independent center that is participating in the Program at the time it submits annual renewal information.

\* \* \* \* \*

*Sponsored center* means a child care center, an at-risk afterschool care center, an adult day care center, an emergency shelter, or an outside-school-hours care center that operates the Program under the auspices of a sponsoring organization. The two types of sponsored centers are as follows:

- (1) An affiliated center is a part of the same legal entity as the CACFP sponsoring organization; or
- (2) An unaffiliated center is legally distinct from the sponsoring organization.

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

- (1) One or more day care homes;
- (2) A child care center, emergency shelter, at-risk afterschool care center, outside-school-hours care center, or adult day care center which is a legally distinct entity from the sponsoring organization;

(3) Two or more child care centers, emergency shelters, at-risk afterschool care centers, outside-school-hours care center, or adult day care centers; or

(4) Any combination of child care centers, emergency shelters, at-risk afterschool care centers, outside-school-hours care centers, adult day care centers, and day care homes.

The term “sponsoring organization” also includes an organization that is entirely responsible for administration of the Program in any combination of two or more child care centers, at-risk afterschool care centers, adult day care centers or outside-school-hours care centers, which meet the definition of *For-profit center* in this section and are part of the same legal entity as the sponsoring organization.

\* \* \* \* \*

*TANF recipient* means an individual or household receiving assistance (as defined in 45 CFR 260.31) under a State-

administered Temporary Assistance for Needy Families program.

*Termination for convenience* means termination of a Program agreement due to considerations unrelated to either party's performance of Program responsibilities under the agreement between:

- (1) A State agency and the independent center,
- (2) A State agency and the sponsoring organization,
- (3) A sponsoring organization and the unaffiliated center, or
- (4) A sponsoring organization and the day care home.

\* \* \* \* \*

■ 28. In § 226.4, revise paragraph (j) to read as follows:

**§ 226.4 Payments to States and use of funds.**

\* \* \* \* \*

(j) *Audit funds.* (1) Funds are available to each State agency in an amount equal to 1.5 percent of the Program funds used by the State during the second fiscal year preceding the fiscal year for which these funds are to be made available. These funds are for the expense of conducting audits under § 226.8 and Program monitoring under § 226.6(m).

(2) State agencies may request an increase in the amount of funds made available under this paragraph.

(i) FNS approval for increased funding will be based on the State agency's expressed need for an increase in resources to meet audit requirements, fulfill monitoring requirements, or effectively improve Program management.

(ii) The total amount of audit funds made available to any State agency under this paragraph may not exceed 2 percent of Program funds used by the State during the second fiscal year preceding the fiscal year for which the funds are made available.

(iii) The amount of assistance provided to a State agency under this paragraph in any fiscal year may not exceed the State's expenditures under §§ 226.6(m) and 226.8 during the fiscal year in which the funds are made available.

\* \* \* \* \*

■ 29. In § 226.6:

- a. Revise paragraph (b) introductory text, paragraphs (b)(1)(xv), (b)(2), (3), (4), and (f)(1)(iv);
- b. Remove paragraph (f)(2) and redesignate paragraph (f)(3) as paragraph (f)(2);
- c. Add a sentence at the end of paragraph (k)(5)(ii);
- d. Add a sentence at the end of paragraph (k)(5)(ix);

- e. Add paragraph (k)(11); and
- f. Revise paragraphs (m)(3), (m)(6); and (p).

The additions and revisions read as follows:

**§ 226.6 State agency administrative responsibilities.**

\* \* \* \* \*

(b) *Program applications and agreements.* Each State agency must establish application review procedures, as described in paragraph (b)(1) of this section, to determine the eligibility of new institutions and facilities for which applications are submitted by sponsoring organizations. Each State agency must establish procedures for the review of renewal information, as described in paragraph (b)(2) of this section, to determine the continued eligibility of renewing institutions. The State agency must enter into written agreements with institutions, as described in paragraph (b)(4) of this section.

(1) \* \* \*

(xv) *Certification of truth of applications and submission of names and addresses.* Institutions must submit a certification that all information on the application is true and correct, along with the names, mailing addresses, and dates of birth of the institution's executive director and chair of the board of directors or the owner, in the case of a for-profit center that does not have an executive director or is not required to have a board of directors. In addition, the institution's Federal Employer Identification Number (FEIN) or the Unique Entity Identifier (UEI) must be provided;

\* \* \* \* \*

(2) *Annual information submission requirements for State agency review of renewing institutions.* Each State agency must establish annual information submission procedures to confirm the continued eligibility of renewing institutions under this part. Renewing institutions must not be required to submit a free and reduced-price policy statement or a nondiscrimination statement unless they make substantive changes to either statement. In addition, the State agency's review procedures must ensure that institutions annually submit information or certify that certain information is still true based on the requirements of this section. For information that must be certified, any new changes made in the past year and not previously reported to the State agency must be updated in the annual renewal information submission. Any additional information submitted in the renewal must be certified by the institution to be true.

(i) This paragraph (b)(2) contains the information that must be certified. The State agency must ensure that renewing independent centers certify the following to be true:

(A) The institution and its principals are not currently on the National disqualified list, per paragraph (b)(1)(xii) of this section;

(B) A list of any publicly funded programs that the sponsoring organization and its principals have participated in, in the past 7 years, is current, per paragraph (b)(1)(xiii)(B) of this section;

(C) The institution and its principals have not been determined ineligible for any other publicly funded programs due to violation of that program's requirements, in the past 7 years, per paragraphs (b)(1)(xiii)(B) and (C) of this section;

(D) No principals have been convicted of any activity that occurred during the past 7 years and that indicated a lack of business integrity, per paragraph (b)(1)(xiv)(B) of this section;

(E) The names, mailing addresses, and dates of birth of all current principals have been submitted to the State agency, per paragraph (b)(1)(xv) of this section;

(F) The institution is currently compliant with the required performance standards of financial viability and management, administrative capability, and program accountability, per paragraph (b)(1)(xviii) of this section; and

(G) Licensing or approval status of each child care center or adult day care center is up-to-date.

(ii) The State agency must ensure that renewing sponsoring organizations certify the following to be true:

(A) All of the requirements under paragraph (b)(2)(i) of this section are certified to be true;

(B) The management plan on file with the State agency is complete and up to date, per paragraph (b)(1)(iv) of this section;

(C) No sponsored facility or principal of a sponsored facility is currently on the National disqualified list, per paragraph (b)(1)(xii) of this section;

(D) The outside employment policy most recently submitted to the State agency remains current and in effect, per paragraph (b)(1)(xvi) of this section;

(E) Licensing or approval status of each sponsored child care center, adult day care center, or day care home is up-to-date;

(F) The list of the sponsoring organization's facilities on file with the State agency is up-to-date; and

(G) All facilities under the sponsoring organization's oversight have adhered to Program training requirements.

(iii) *State agency review of institution information.* The State agency's review of information that must be submitted, certified or updated annually is as follows:

(A) *Management plan.* The State agency must ensure that renewing sponsoring organizations certify that the sponsoring organization has reviewed the current management plan on file with the State agency and that it is complete and up to date. If the management plan has changed, the sponsoring organization must submit updates to the management plan that meet the requirements of § 226.16(b)(1). The State agency must establish factors, consistent with § 226.16(b)(1), that it will consider in determining whether a renewing sponsoring organization has sufficient staff to perform required monitoring responsibilities at all of its sponsored facilities. As part of its management plan review, the State agency must determine the appropriate level of staffing for the sponsoring organization, consistent with the staffing range of monitors set forth at § 226.6(b)(1) and the factors the State agency has established.

(B) *Administrative budget submission.* The State agency must ensure that renewing sponsoring organizations submit an administrative budget for the upcoming year with sufficiently detailed information concerning projected CACFP administrative earnings and expenses, as well as other non-Program funds to be used in Program administration. The State agency must be able to determine the allowability, necessity, and reasonableness of all proposed expenditures, and to assess the sponsoring organization's capability to manage Program funds. The administrative budget must demonstrate that the sponsoring organization will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796–2 (*Financial Management in the Child and Adult Care Food Program*), 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, and applicable Office of Management and Budget circulars. The administrative budget submitted by a sponsoring organization of centers must demonstrate that the administrative costs to be charged to the Program do not exceed 15 percent of the meal reimbursements estimated or actually earned during the budget year, unless the State agency grants a waiver, as described in § 226.7(g). For sponsoring organizations of day care homes seeking to carry over administrative funds, as described in

§ 226.12(a)(3), the budget must include an estimate of requested administrative fund carryover amounts and a description of proposed purpose for which those funds would be obligated or expended.

(C) *Presence on the National disqualified list.* The State agency must ensure that renewing institutions certify that neither the institution nor its principals are on the National disqualified list. The State agency must also ensure that renewing sponsoring organizations certify that no sponsored facility or facility principal is on the National disqualified list.

(D) *Ineligibility for other publicly funded programs.* A State agency is prohibited from approving a renewing institution or facility's application if, during the past 7 years, the institution, facility, responsible principals, or responsible individuals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the institution, facility, responsible principals, or responsible individuals have been fully reinstated in or determined eligible for that program, including the payment of any debts owed. The State agency must follow up with the entity administering the publicly funded program to gather sufficient evidence to determine whether the institution or its principals were, in fact, determined ineligible.

(E) *Information on criminal convictions.* The State agency must ensure that renewing institutions certify that the institution's principals have not been convicted of any activity that occurred during the past 7 years and that indicates a lack of business integrity, as defined in paragraph (c)(1)(ii)(A) of this section.

(F) *Submission of names and addresses.* The State agency must ensure that renewing institutions submit a certification attesting to the validity of the following information: full legal name and any names previously used, mailing address, and dates of birth of the institution's executive director and chair of the board of directors or the owner, in the case of a for-profit center that does not have an executive director or is not required to have a board of directors. In addition, the institution's Federal Employer Identification Number (FEIN) or the Unique Entity Identifier (UEI) must be provided.

(G) *Outside employment policy.* The State agency must ensure that renewing sponsoring organizations certify that the outside employment policy most recently submitted to the State agency remains current and in effect or the

sponsoring organization must submit an updated outside employment policy at the time of renewal. The policy must restrict other employment by employees that interferes with an employee's performance of Program-related duties and responsibilities, including outside employment that constitutes a real or apparent conflict of interest.

(H) *Compliance with performance standards.* The State agency must ensure that each renewing institution certifies that it is still in compliance with the performance standards described in paragraph (b)(1)(xviii) of this section, meaning it is financially viable, is administratively capable of operating the Program in accordance with this part, and has internal controls in effect to ensure accountability.

(I) *Licensing.* The State agency must ensure that each independent center certifies that its licensing or approval status is up-to-date and that it continues to meet the licensing requirements described in paragraphs (d) and (e) of this section. Sponsoring organizations must certify that the licensing or approval status of their facilities is up-to-date and that they continue to meet the licensing requirements described in paragraphs (d) and (e) of this section. If the independent center or facility has a new license not previously on file with the State agency, a copy must be submitted, unless the State agency has other means of confirming the licensing or approval status of any independent center or facility providing care.

(J) *Facility lists.* The State agency must ensure that each sponsoring organization certifies that the list of all of their applicant day care homes, child care centers, outside-school-hours-care centers, at-risk afterschool care centers, emergency shelters, and adult day care centers on file with the State agency is up-to-date.

(K) *Facility training.* The State agency must ensure that renewing sponsoring organizations certify that all facilities under their oversight have adhered to the training requirements set forth in Program regulations.

(iv) *Additional Information collection.* Institutions must provide information to the State agency as specified in paragraphs (f)(3), (f)(4), and (f)(7) of this section.

(3) *State agency notification requirements.* (i) Any new institution applying for participation in the Program must be notified in writing of approval or disapproval by the State agency, within 30 calendar days of the State agency's receipt of a complete application. Whenever possible, State agencies should provide assistance to institutions that have submitted an

incomplete application. Any disapproved applicant institution must be notified of the reasons for its disapproval and its right to appeal, as described in paragraph (k) of this section. Any disapproved applicant day care home or unaffiliated center must be notified of the reasons for its disapproval and its right to appeal, as described in paragraph (l) of this section.

(ii) Any renewing institution must be provided written notification indicating whether it has completely and sufficiently met all renewal information requirements within 30 days of the submission of renewal information. Whenever possible, State agencies should provide assistance to institutions whose information is incomplete.

(4) *Program agreements.* (i) The State agency must require each institution that has been approved for participation in the Program to enter into a permanent agreement governing the rights and responsibilities of each party. The existence of a valid permanent agreement, however, does not eliminate the need for an institution to comply with the annual information submission requirements and related provisions at paragraphs (b) and (f) of this section.

(ii) The existence of a valid permanent agreement does not limit the State agency's ability to terminate the agreement, as provided under paragraph (c)(3) of this section. The State agency must terminate the institution's agreement whenever an institution's participation in the Program ends. The State agency must terminate the agreement for cause based on violations by the institution, facility, responsible principals, or responsible individuals, as described in paragraph (c) of this section. The State agency or institution may terminate the agreement at its convenience for considerations unrelated to the institution's performance of Program responsibilities under the agreement. However, any action initiated by the State agency to terminate an agreement for its convenience requires prior consultation with FNS. Termination for convenience does not result in ineligibility for any program authorized under this part or parts 210, 215, 220, or 225 of this chapter.

(iii) The Program agreement must include the following requirements:

(A) The responsibility of the institution to accept final financial and administrative management of a proper, efficient, and effective food service, and comply with all requirements under this part.

(B) The responsibility of the institution to comply with all

requirements of 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 (parts 15, 15a and 15b of this title), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with the nondiscrimination policy, to the end that no person may, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, the Program.

(C) The right of the State agency, the Department, and other State or Federal officials to make announced or unannounced reviews of their operations during the institution's normal hours of child or adult care operations, and that anyone making such reviews must show photo identification that demonstrates that they are employees of one of these entities.

(f) \* \* \*

(1) \* \* \*

(iv) Require each sponsoring organization to submit an administrative budget with sufficiently detailed information concerning projected CACFP administrative earnings and expenses, as well as other non-Program funds to be used in Program administration, for the State agency to determine the allowability, necessity, and reasonableness of all proposed expenditures, and to assess the sponsoring organization's capability to manage Program funds. The administrative budget must demonstrate that the sponsoring organization will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796-2 (*Financial Management—Child and Adult Care Food Program*), 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR part 400 and part 415, and applicable Office of Management and Budget circulars. The administrative budget submitted by a sponsoring organization of centers must demonstrate that the administrative costs to be charged to the Program do not exceed 15 percent of the meal reimbursements estimated or actually earned during the budget year, unless the State agency grants a waiver, as described in § 226.7(g). For sponsoring organizations of day care homes seeking to carry over administrative funds, as described in § 226.12(a)(3), the budget must include

an estimate of requested administrative fund carryover amounts and a description of proposed purpose for which those funds would be obligated or expended.

\* \* \* \* \*

(k) \* \* \*

(5) \* \* \*

(ii) \* \* \* The State agency must provide a copy of the written request for an administrative review, including the date of receipt of the request to FNS within 10 days of its receipt of the request.

\* \* \* \* \*

(ix) \* \* \* State agencies failing to meet the timeframe set forth in this paragraph are liable for all valid claims for reimbursement to aggrieved institutions, as specified in paragraph (k)(11)(i) of this section.

\* \* \* \* \*

(11) *State liability for payments.* (i) A State agency that fails to meet the 60-day timeframe set forth in paragraph (k)(5)(ix) of this section must pay, from non-Federal sources, all valid claims for reimbursement to the institution during the period beginning on the 61st day and ending on the date on which the hearing determination is made, unless FNS determines that an exception should be granted.

(ii) FNS will notify the State agency of its liability for reimbursement at least 30 days before liability is imposed. The timeframe for written notice from FNS is an administrative requirement and may not be used to dispute the State's liability for reimbursement.

(iii) The State agency may submit, for FNS review, information supporting a request for a reduction in the State's liability, a reconsideration of the State's liability, or an exception to the 60-day deadline, for exceptional circumstances. After review of this information, FNS will recover any improperly paid Federal funds.

\* \* \* \* \*

(m) \* \* \*

(3) *Review content.* As part of its conduct of reviews, the State agency must assess each institution's compliance with the requirements of this part pertaining to:

(i) Recordkeeping;

(ii) Meal counts;

(iii) Administrative costs;

(iv) Any applicable instructions and handbooks issued by FNS and the Department to clarify or explain this part, and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of this part;

(v) Facility licensing and approval;

(vi) Compliance with the requirements for annual updating of enrollment forms;

(vii) Compliance with the requirements for submitting and ensuring the accuracy of the annual renewal information;

(viii) If an independent center, observation of a meal service;

(ix) If a sponsoring organization, training and monitoring of facilities, including the timing of reviews, as described in § 226.16(d)(4)(iii);

(x) If a sponsoring organization, implementation of the household contact system established by the State agency pursuant to paragraph (m)(5) of this section;

(xi) If a sponsoring organization of day care homes, the requirements for classification of tier I and tier II day care homes; and

(xii) All other Program requirements.

\* \* \* \* \*

(6) *Frequency and number of required institution reviews.* The State agency must annually review at least 33.3 percent of all institutions. At least 15 percent of the total number of facility reviews required must be unannounced. The State agency must review institutions according to the following schedule:

(i) At least once every 3 years, independent centers and sponsoring organizations that operate 1 to 100 facilities must be reviewed. A sponsoring organization review must include reviews of 10 percent of the sponsoring organization's facilities.

(ii) At least once every 2 years, sponsoring organizations that operate more than 100 facilities, that conduct activities other than CACFP, that have been identified during a recent review as having serious management problems, or that are at risk of having serious management problems must be reviewed. These reviews must include reviews of 5 percent of the sponsoring organization's first 1,000 facilities and 2.5 percent of the sponsoring organization's facilities in excess of 1,000.

(iii) At least once every 2 years, independent centers that conduct activities other than CACFP, that have been identified during a recent review as having serious management problems, or that are at risk of having serious management problems must be reviewed.

(iv) New sponsoring organizations that operate five or more facilities must be reviewed within the first 90 days of Program operations.

\* \* \* \* \*

(p) *Sponsoring organization agreement.* (1) Each State agency must

develop and provide for the use of a standard form of written permanent agreement between each sponsoring organization and the day care homes or unaffiliated child care centers, outside-school-hours-care centers, at-risk afterschool care centers, emergency shelters, or adult day care centers for which it has responsibility for Program operations. The agreement must specify the rights and responsibilities of both parties. The State agency may, at the request of the sponsoring organization, approve an agreement developed by the sponsoring organization. Nothing in this paragraph limits the ability of the sponsoring organization to suspend or terminate the permanent agreement, as described in § 226.16(l).

(2) At a minimum, the standard agreement must require day care homes and centers to:

(i) Allow visits by sponsoring organizations or State agencies to review meal service and records;

(ii) Promptly inform the sponsoring organization about any change in its licensing or approval status;

(iii) Meet any State agency approved time limit for submission of meal records; and

(iv) Distribute to parents a copy of the sponsoring organization's notice to parents if directed to do so by the sponsoring organization.

(3) The agreement must include the right of day care homes and centers to receive timely reimbursement. The sponsoring organization must pay program funds to day care homes and centers within 5 working days of receipt from the State agency.

(4) The State agency must include in this agreement its policy to restrict transfers of day care homes among sponsoring organizations. The policy must restrict the transfers to no more frequently than once per year, except under extenuating circumstances, such as termination of the sponsoring organization's agreement or other circumstances defined by the State agency.

(5) The State agency may, at the request of the sponsoring organization, approve an agreement developed by the sponsoring organization.

\* \* \* \* \*

■ 30. In § 226.7:

■ a. Revise paragraphs (b), (g), and (j); and

■ b. Remove paragraph (m).

The revisions read as follows:

**§ 226.7 State agency responsibilities for financial management.**

\* \* \* \* \*

(b) *Financial management system.* Each State agency must establish and

maintain an acceptable financial management system, adhere to financial management standards and otherwise carry out financial management policies in accordance with 2 CFR parts 200, 400, 415, 416, 417, 418, and 421, and FNS Instruction 796-2, as applicable, and related FNS guidance to identify allowable Program costs and establish standards for institutional recordkeeping and reporting. The State agency must provide guidance on financial management requirements to each institution.

(1) State agencies must also have a system in place for:

(i) Annually reviewing at least 1 month's bank account activity of all sponsoring organizations against documents adequate to support that the financial transactions meet Program requirements. The State agency may expand the review to examine additional months of bank account activity if discrepancies are found. If the State agency identifies and is unable to verify any expenditures that have the appearance of violating Program requirements, or if the discrepancy is significant, the State agency must refer the sponsoring organization's bank account activity to the appropriate State authorities.

(ii) Annually reviewing actual expenditures reported of Program funds and the amount of meal reimbursement funds retained from centers, if any, for administrative costs for all sponsoring organizations of unaffiliated centers. State agencies must reconcile reported expenditures with Program payments to ensure that funds are fully accounted for, and use the reported actual expenditures as the basis for selecting a sample of expenditures for validation. If the State agency identifies and is unable to verify any expenditures that have the appearance of violating Program requirements, the State agency must refer the sponsoring organization's bank account activity to the appropriate State authorities.

(iii) Monitoring and reviewing the institutions' documentation of their nonprofit status to ensure that all Program reimbursement funds are used solely for the conduct of the food service operation or to improve food service operations, principally for the benefit of children or adult participants.

(2) The financial management system standards for institutional recordkeeping and reporting must:

(i) Prohibit claiming reimbursement for meals provided by a child or an adult participant's family, except as authorized at §§ 226.18(e) and 226.20(b)(2), (g)(1)(ii), and (g)(2)(ii); and

(ii) Allow the cost of meals served to adults who perform necessary food service labor under the Program, except in day care homes.

\* \* \* \* \*

(g) *Budget approval.* The State agency must review institution budgets and must limit allowable administrative claims by each sponsoring organization to the administrative costs approved in its budget, except as provided in this section. The budget must demonstrate the institution's ability to manage Program funds in accordance with this part, FNS Instruction 796-2, 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, and applicable Office of Management and Budget circulars. Sponsoring organizations must submit an administrative budget to the State agency annually, and independent centers must submit budgets as frequently as required by the State agency. Budget levels may be adjusted to reflect changes in Program activities. If the institution does not intend to use non-CACFP funds to support any required CACFP functions, the institution's budget must identify a source of non-Program funds that could be used to pay overclaims or other unallowable costs. If the institution intends to use any non-Program resources to meet CACFP requirements, these non-Program funds should be accounted for in the institution's budget, and the institution's budget must identify a source of non-Program funds that could be used to pay overclaims or other unallowable costs.

(1) For sponsoring organizations of centers, the State agency is prohibited from approving the sponsoring organization's administrative budget, or any amendments to the budget, if the administrative budget shows the Program will be charged for administrative costs in excess of 15 percent of the meal reimbursements estimated to be earned during the budget year. However, the State agency may waive this limit if the sponsoring organization provides justification that it requires Program funds in excess of 15 percent to pay its administrative costs and if the State agency is convinced that the institution will have adequate funding to provide meals meeting the requirements of § 226.20. The State agency must document all waiver approvals and denials in writing and provide a copy of all such letters to the appropriate FNSRO.

(2) For sponsoring organizations of day care homes seeking to carry over administrative funds, as described in § 226.12(a)(3), the State agency must

require the budget to include an estimate of the requested administrative fund carryover amount and a description of the purpose for which those funds would be obligated or expended by the end of the fiscal year following the fiscal year in which they were received. In approving a carryover request, State agencies must take into consideration whether the sponsoring organization has a financial management system that meets Program requirements and is capable of controlling the custody, documentation, and disbursement of carryover funds. As soon as possible after fiscal year close-out, the State agency must require sponsoring organizations carrying over administrative funds to submit an amended budget for State agency review and approval. The amended budget must identify the amount of administrative funds actually carried over and describe the purpose for which the carry-over funds have been or will be used.

\* \* \* \* \*

(j) *Recovery of overpayments.* Each State agency must establish procedures to recover outstanding start-up, expansion, and advance payments from institutions which, in the opinion of the State agency, will not be able to earn these payments. In addition, each State agency must establish procedures to recover administrative funds from sponsoring organizations of day care homes that are not properly payable under FNS Instruction 796-2, administrative funds that are in excess of the 10 percent maximum carryover amount, and carryover amounts that are not expended or obligated by the end of the fiscal year following the fiscal year in which they were received.

\* \* \* \* \*

■ 31. In § 226.10, revise paragraph (c) to read as follows:

**§ 226.10 Program payment procedures.**

\* \* \* \* \*

(c) Claims for Reimbursement must report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the final Report of the Child and Adult Care Food Program (FNS 44) required under § 226.7(d). In submitting a Claim for Reimbursement, each institution must certify that the claim is correct and that records are available to support that claim.

(1) Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization

must perform edit checks on each facility's meal claim. At a minimum, the sponsoring organization's edit checks must:

(i) Verify that each facility has been approved to serve the types of meals claimed; and

(ii) Compare the number of children or eligible adult participants enrolled for care at each facility, multiplied by the number of days on which the facility is approved to serve meals, to the total number of meals claimed by the facility for that month. Discrepancies between the facility's meal claim and its enrollment must be subjected to more thorough review to determine if the claim is accurate.

(2) Sponsoring organizations of unaffiliated centers must make available to the State agency an annual report detailing actual expenditures of Program funds and the amount of meal reimbursement funds retained from centers, if any, for administrative costs for the year to which the claims apply. The report must use the same cost categories as the approved annual budget submitted by the sponsoring organization.

(3) Sponsoring organizations of for-profit child care centers or for-profit outside-school-hours care centers must submit the number and percentage of children in care—enrolled or licensed capacity, whichever is less—that documents that at least 25 percent are eligible for free or reduced-price meals or are title XX beneficiaries. Sponsoring organizations must not submit a claim for any for-profit center in which less than 25 percent of the children in care—enrolled or licensed capacity, whichever is less—during the claim month were eligible for free or reduced-price meals or were title XX beneficiaries.

(4) For each month they claim reimbursement, independent for-profit child care centers and independent for-profit outside-school-hours care centers must submit the number and percentage of children in care—enrolled or licensed capacity, whichever is less—that documents that at least 25 percent are eligible for free or reduced-price meals or are title XX beneficiaries. However, children who only receive at-risk afterschool meals or snacks must not be considered in determining this eligibility.

(5) For each month they claim reimbursement, independent for-profit adult day care centers must submit the percentages of enrolled adult participants receiving title XIX or title XX benefits for months in which not less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries. For the claim, sponsoring



organizations of adult day care centers must submit the percentage of enrolled adult participants receiving title XIX or title XX benefits for each center. Sponsoring organizations must not submit claims for adult day care centers for months in which less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries.

\* \* \* \* \*

■ 32. In § 226.12, revise paragraph (a) to read as follows:

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

(a) *General.* Sponsoring organizations of day care homes receive payments for administrative costs, subject to the following conditions:

(1) Sponsoring organizations will receive reimbursement for the administrative costs of the sponsoring organization in an amount that is not less than the product obtained each month by multiplying:

(i) The number of day care homes of the sponsoring organization submitting a claim for reimbursement during the month, by

(ii) The appropriate administrative rates announced annually in the **Federal Register**.

(2) FNS determines administrative reimbursement by annually adjusting the following base administrative rates, as set forth in § 226.4(i):

(i) Initial 50 day care homes, 42 dollars;

(ii) Next 150 day care homes, 32 dollars;

(iii) Next 800 day care homes, 25 dollars;

(iv) Additional day care homes, 22 dollars.

(3) With State agency approval, a sponsoring organization may carry over a maximum of 10 percent of administrative funds received under paragraph (a)(1) of this section for use in the following fiscal year. If any carryover funds are not obligated or expended in the following fiscal year, they must be returned to the State agency, as described in § 226.7(j).

(4) State agencies must recover any administrative funds not properly payable, as described in FNS Instruction 796–2.

\* \* \* \* \*

■ 33. In § 226.13, revise paragraph (a) to read as follows:

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

(a) Payments will be made only to sponsoring organizations operating under an agreement with the State

agency for the meal types specified in the agreement served to enrolled nonresident children and eligible enrolled children of day care home providers, at approved day care homes. Each State agency must base reimbursement to each approved day care home on daily meal counts recorded by the provider.

\* \* \* \* \*

■ 34. In § 226.15, revise paragraph (b) to read as follows:

**§ 226.15 Institution provisions.**

\* \* \* \* \*

(b) *New applications and renewals.* Each new institution must submit to the State agency an application with all information required for its approval, as set forth in §§ 226.6(b)(1) and 226.6(f). This information must demonstrate that a new institution has the administrative and financial capability to operate the Program, as described in the performance standards set forth in § 226.6(b)(1)(xviii). Renewing institutions must annually certify that they are capable of operating the Program, as set forth in § 226.6(b)(2).

\* \* \* \* \*

■ 35. Amend § 226.16 as follows:

■ a. In paragraphs (b)(2) and (b)(3), remove the words “child care and adult day care”;

■ b. In paragraph (b)(4), remove the words “on or after June 20, 2000”;

■ c. Remove the word “and” at the end of paragraph (b)(7);

■ d. Remove the “.” at the end of paragraph (b)(8) and add in its place “; and”;

■ e. Add paragraph (b)(9);

■ f. In paragraphs (c) and (d)(1), remove the words “child care and adult day care”;

■ g. Revise paragraph (d)(3);

■ h. Add paragraphs (d)(4)(iii)(E) and (F);

■ i. In paragraph (i), remove the words “child and adult day care”;

■ j. Revise paragraph (m).

The additions and revisions read as follows:

**§ 226.16 Sponsoring organization provisions.**

\* \* \* \* \*

(b) \* \* \*

(9) For sponsoring organizations of unaffiliated centers, the name and mailing address of each center.

\* \* \* \* \*

(d) \* \* \*

(3) Additional mandatory training sessions, as defined by the State agency, for key staff from all sponsored facilities not less frequently than annually. At a minimum, this training must include

instruction, appropriate to the level of staff experience and duties, on the Program’s meal patterns, meal counts, claims submission and review procedures, recordkeeping requirements, and reimbursement system.

(4) \* \* \*

(iii) \* \* \*

(E) The timing of unannounced reviews must be varied so that they are unpredictable to the facility; and

(F) All types of meal service must be subject to review and sponsoring organizations must vary the meal service reviewed.

\* \* \* \* \*

(m) Sponsoring organizations of day care homes or unaffiliated centers must not make payments to employees or contractors solely on the basis of the number of homes or centers recruited. However, employees or contractors may be paid or evaluated on the basis of recruitment activities accomplished.

■ 36. In § 226.17, add paragraphs (e) and (f) to read as follows:

**§ 226.17 Child care center provisions.**

\* \* \* \* \*

(e) Unaffiliated sponsored child care centers must enter into a written permanent agreement with the sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must include the provisions set forth in paragraph (b) of this section.

(f) Independent child care centers must enter into a written permanent agreement with the State agency. The agreement must specify the rights and responsibilities of both parties as required by § 226.6(b)(4). At a minimum, the agreement must include the provisions set forth in paragraph (b) of this section.

■ 37. In § 226.17a, revise paragraphs (f)(2) and (g) to read as follows:

**§ 226.17a At-risk afterschool care center provisions.**

\* \* \* \* \*

(f) \* \* \*

(2) *Agreements.* The State agency must enter into a permanent agreement with an institution approved to operate one or more at-risk afterschool care centers, as described in § 226.6(b)(4). The agreement must describe the approved afterschool care programs and list the approved centers. The agreement must also require the institution to comply with the applicable requirements of this part 226.

(i) Unaffiliated sponsored afterschool care centers must enter into a written permanent agreement with the

sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must include the applicable provisions set forth in this section.

(ii) Independent afterschool care centers must enter into a written permanent agreement with the State agency. The agreement must specify the rights and responsibilities of both parties as required by § 226.6(b)(4). At a minimum, the agreement must include the applicable provisions set forth in this section.

(g) *Application process in subsequent years.* To continue participating in the Program, independent at-risk afterschool care centers must comply with the annual information submission requirements, as described in §§ 226.6(b)(2)(i) and (f)(3)(ii). Sponsoring organizations of at-risk afterschool care centers must comply with the annual information submission requirements, as described in in § 226.6(b)(2)(ii), and provide area eligibility data, as described in § 226.15(g).

\* \* \* \* \*

■ 38. In § 226.18:

- a. Revise paragraph (b)(11);
- b. Redesignate paragraphs (b)(13) through (b)(16) as paragraphs (b)(14) through (b)(17), respectively; and
- c. Add new paragraph (b)(13).

The addition 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. These options include:

(i) Receiving tier I rates for the meals served to eligible enrolled children, by electing to have the sponsoring organization identify all income-eligible children through the collection of free and reduced-price applications and the sponsoring organization or day care home’s possession of other proof of a child or household’s participation in a categorically eligible program;

(ii) Receiving tier I rates for the meals served to eligible enrolled children, by electing to have the sponsoring organization identify only those children for whom the sponsoring organization or day care home possess documentation of the child or household’s participation in a categorically eligible program, under the expanded categorical eligibility

provision, as described in § 226.23(e)(1); or

(iii) Receiving tier II rates of reimbursement for all meals served to enrolled children;

\* \* \* \* \*

(13) The right of the tier II day care home to assist in collecting applications from households and transmitting the applications to the sponsoring organization. However, a tier II day care home may not review the collected applications. The sponsoring organizations may prohibit a tier II day care home from assisting in collection and transmittal of applications if the day care home does not comply with the process, as described in § 226.23(e)(2)(viii);

\* \* \* \* \*

■ 39. In § 226.19, add paragraphs (d) and (e) to read as follows:

**§ 226.19 Outside-school-hours care center provisions.**

\* \* \* \* \*

(d) Unaffiliated sponsored outside-school-hours-care centers must enter into a written permanent agreement with the sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must include the provisions set forth in paragraph (b) of this section.

(e) Independent outside-school-hours care centers must enter into a written permanent agreement with the State agency. The agreement must specify the rights and responsibilities of both parties as required by § 226.6(b)(4). At a minimum, the agreement must include the provisions described in paragraph (b) of this section.

■ 40. In § 226.19a, add paragraphs (d) and (e) to read as follows:

**§ 226.19a Adult day care center provisions.**

\* \* \* \* \*

(d) Unaffiliated sponsored adult day care centers must enter into a written permanent agreement with the sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must address the provisions set forth in paragraph (b) this section.

(e) Independent adult day care centers must enter into a written permanent agreement with the State agency. The agreement must specify the rights and responsibilities of both parties as required by § 226.6(b)(4). At a minimum, the agreement must include the provisions described in paragraph (b) of this section.

■ 41. In § 226.21, revise paragraph (a) introductory text to read as follows:

**§ 226.21 Food service management companies.**

(a) Any institution may contract with a food service management company. An institution which contracts with a food service management company must remain responsible for ensuring that the food service operation conforms to its agreement with the State agency. All procurements of meals from food service management companies must adhere to the procurement standards set forth in § 226.22 and comply with the following procedures intended to prevent fraud, waste, and Program abuse:

\* \* \* \* \*

■ 42. Revise § 226.22 to read as follows:

**§ 226.22 Procurement standards.**

(a) *General.* This section establishes standards and guidelines for the procurement of foods, supplies, equipment, and other goods and services. These standards are furnished to ensure that goods and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and Executive orders.

(b) *Compliance.* Institutions may use their own procedures for procurement with Program funds to the extent that:

(1) Procurements by public institutions comply with applicable State or local laws and standards set forth in 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR parts 400 and 415; and

(2) Procurements by private nonprofit institutions comply with standards set forth in 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR parts 400 and 415.

(c) *Geographic preference.* (1) Institutions participating in the Program may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the institution making the purchase has the discretion to determine the local area to which the geographic preference option will be applied;

(2) For the purpose of applying the optional geographic preference in paragraph (c)(1) of this section, “unprocessed locally grown or locally raised agricultural products” means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques will not be considered as changing an agricultural product into a product of a different

kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

■ 43. In § 226.23, add paragraph (e)(1)(vii) to read as follows:

**§ 226.23 Free and reduced-price meals.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(vii) If a tier II day care home elects to assist in collecting and transmitting the applications to the sponsoring organization, it is the responsibility of the sponsoring organization to establish procedures to ensure the provider does not review or alter the application. The household consent form must explain that:

(A) The household is not required to complete the income eligibility form in order for their children to participate in CACFP;

(B) The household may return the application to either the sponsoring organization or the day care home provider;

(C) By signing the letter and giving it to the day care home provider, the household has given the day care home provider written consent to collect and transmit the household's application to the sponsoring organization; and

(D) The application will not be reviewed by the day care home provider.

\* \* \* \* \*

■ 44. In § 226.25, add paragraph (j) to read as follows:

**§ 226.25 Other provisions.**

\* \* \* \* \*

(j) *Fines.* (1) An institution that is a school food authority may be subject to fines. The State agency may establish an assessment when it has determined that the institution or its facility has:

(i) Failed to correct severe mismanagement of the Program;

(ii) Disregarded a Program requirement of which the institution or its facility had been informed; or

(iii) Failed to correct repeated violations of Program requirements.

(2) FNS may direct the State agency to establish a fine against any institution

when it has determined that the institution or its facility has committed one or more acts under paragraph (j)(1) of this section.

(3) Funds used to pay a fine established under this paragraph must be derived from non-Federal sources. In calculating an assessment, the State agency must calculate the fine based on the amount of Program reimbursement earned by the institution or its facility for the most recent fiscal year for which full year data is available, provided that the fine does not exceed the equivalent of:

(i) For the first fine, 1 percent of the amount of meal reimbursement earned for the fiscal year;

(ii) For the second fine, 5 percent of the amount of meal reimbursement earned for the fiscal year; and

(iii) For the third or subsequent fine, 10 percent of the amount of meal reimbursement earned for the fiscal year.

(4) The State agency must inform FNS at least 30 days prior to establishing the fine under this paragraph. The State agency must send the institution written notification of the fine established under this paragraph and provide a copy of the notification to FNS. The notification must:

(i) Specify the violations or actions which constitute the basis for the fine and indicate the amount of the fine;

(ii) Inform the institution that it may appeal the fine and advise the institution of the appeal procedures established under § 226.6(k);

(iii) Indicate the effective date and payment procedures should the institution not exercise its right to appeal within the specified timeframe.

(5) Any institution subject to a fine under paragraph (j)(1) of this section may appeal the State agency's determination. In appealing a fine, the institution must submit to the State agency any pertinent information, explanation, or evidence addressing the Program violations identified by the State agency. Any institution seeking to appeal the State agency determination must follow State agency appeal procedures.

(6) The decision of the State agency review official is final and not subject to further administrative or judicial review. Failure to pay a fine established under this paragraph may be grounds for suspension or termination.

(7) Money received by the State agency as a result of a fine established under this paragraph against an institution and any interest charged in the collection of these fines must be remitted to FNS, and then remitted to the United States Treasury.

■ 45. Revise § 226.26 to read as follows:

**§ 226.26 Program information.**

Persons seeking information about this Program should contact their State administering agency or the appropriate FNSRO. The FNS website has contact information for State agencies at <https://www.fns.usda.gov/fns-contacts> and FNSROs at <https://www.fns.usda.gov/fns-regional-offices>.

**PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS**

■ 46. The authority citation for part 235 continues to read as follows:

**Authority:** Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

**§ 235.4 [Amended]**

■ 47. In § 235.4, amend paragraph (b)(2) by removing the term “§ 235.11(g)” and add in its place the term “§ 235.11(h)”.

■ 48. In § 235.5:

■ a. Revise paragraph (d); and

■ b. Amend paragraph (e)(2) by removing the word “unexpended” and adding in its place the word “unobligated”.

The revision reads as follows:

**§ 235.5 Payments to States.**

\* \* \* \* \*

(d) *Reallocation of funds.* Annually, between March 1 and May 1 on a date specified by FNS, of each year, each State agency shall submit to FNS a State Administrative Expense Funds Reallocation Report (FNS-525) on the use of SAE funds. At such time, a State agency may release to FNS any funds that have been allocated, reallocated or transferred to it under this part or may request additional funds in excess of its current grant level. Based on this information or on other available information, FNS shall reallocate, as it determines appropriate, any funds allocated to State agencies in the current fiscal year which will not be obligated in the following fiscal year and any funds carried over from the prior fiscal year which remain unobligated at the end of the current fiscal year. Reallocated funds shall be made available for payment to a State agency upon approval by FNS of the State agency's amendment to the base year plan which covers the reallocated funds, if applicable. Notwithstanding any other provision of this part, a State agency may, at any time, release to FNS for reallocation any funds that have been allocated, reallocated or transferred to it under this part and are not needed to

implement its approved plan under this section.

\* \* \* \* \*

§ 235.6 [Amended]

- 49. In § 235.6, amend paragraph (a) by:
  - a. Redesignating as paragraph (a–1) as paragraph (a)(1);
  - b. In newly redesignated paragraph (a)(1), removing the term “§ 235.11(g)(3)” and adding in its place the term “§ 235.11(h)(3)” and removing the term “§ 235.11(g)(1) and (2)” and adding in its place the term “§§ 235.11(h)(1) and (2)”; and
  - c. Redesignating paragraph (a–2) as paragraph (a)(2).
- 50. In § 235.11:
  - a. Redesignate paragraphs (c) through (g) as paragraphs (d) through (h), respectively, and add new paragraph (c);
  - b. In newly redesignated paragraph (e), remove the term “paragraphs (b) or (c)” and add in its place the term “paragraphs (b), (c), or (d)”;
  - c. In redesignated paragraph (g), remove the term “paragraph (b)” and add in its place the term “paragraphs (b) and (c)” and add the words “or fine” after the word “sanction” each time it appears; and
  - d. Revise redesignated paragraph (h)(3).

The addition and revision read as follows:

§ 235.11 Other provisions.

\* \* \* \* \*

(c) *Fines.* (1) FNS may establish a fine against any State agency administering the programs under parts 210, 215, 220, 225, 226, and 250 of this chapter, as it applies to the operation of the Food Distribution Program in schools and child and adult care institutions, when it has determined that the State agency has:

- (i) Failed to correct severe mismanagement of the programs;
  - (ii) Disregarded a program requirement of which the State has been informed; or
  - (iii) Failed to correct repeated violations of program requirements.
- (2) Funds used to pay a fine established under paragraph (c)(1) of this section must be derived from non-Federal sources. The amount of the fine will not exceed the equivalent of:
- (i) For the first fine, 1 percent of all allocations made available under § 235.4 during the most recent fiscal year for which full year data are available;
  - (ii) For the second fine, 5 percent of all allocations made available under § 235.4 during the most recent fiscal year for which full year data are available; and
  - (iii) For the third or subsequent fines, 10 percent of all allocations made available under § 235.4 during the most recent fiscal year for which full year data are available.

(3) State agencies seeking to appeal a fine established under this paragraph must follow the procedures set forth in this paragraph (g).

\* \* \* \* \*

(h) \* \* \*

(3) *Continuing education and training standards for State directors of school nutrition programs and distributing agencies.* Each school year, all State directors with responsibility for the National School Lunch Program under part 210 of this chapter and the School Breakfast Program under part 220 of this chapter, as well as those responsible for the distribution of USDA donated foods under part 250 of this chapter, must complete a minimum of 15 hours of training in core areas that may include nutrition, operations, administration, communications and marketing. State directors tasked with National School Lunch Program procurement responsibilities must complete annual procurement training, as required under § 210.21(h) of this chapter. Additional hours and topics may be specified by FNS, as needed, to address program integrity and other critical issues.

\* \* \* \* \*

Cynthia Long,

Administrator, Food and Nutrition Service.

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