

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

[FNS–2024–0005]

RIN 0584–AE83

**Serious Deficiency Process in the Child and Adult Care Food Program and Summer Food Service Program****AGENCY:** Food and Nutrition Service (FNS), USDA.**ACTION:** Proposed rule.

**SUMMARY:** This rulemaking proposes important modifications to make the application of serious deficiency procedures in the Child and Adult Care Food Program and Summer Food Service Program consistent, effective, and in line with current requirements under the Richard B. Russell National School Lunch Act. The serious deficiency process provides a systematic way for State agencies and sponsoring organizations to correct serious management problems, and when that effort fails, protect Child Nutrition Program integrity through due process. In response to public comments received on a prior rulemaking, the Food and Nutrition Service (FNS) proposes improvements to ensure that application of the serious deficiency process is fair and fully implemented. FNS proposes to add clarity to the serious deficiency process by defining key terms, establishing a timeline for full correction, and establishing criteria for determining when the serious deficiency process must be implemented. This rulemaking will also address termination for cause and disqualification, implementation of legal requirements for records maintained on individuals on the National Disqualified List, and participation of multi-State sponsoring organizations.

**DATES:** Written comments must be received on or before May 21, 2024 to be assured of consideration.

**ADDRESSES:**

*Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

*Mail:* Send comments to: Navneet Kaur Sandhu, Program Integrity and Innovation Division, USDA Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314.

All written comments submitted in response to the provisions of this proposed rule will be included in the record and will be made available to the

public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the written comments publicly available on the internet via <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Navneet Kaur Sandhu, Program Integrity and Innovation Division, USDA Food and Nutrition Service, 703–305–2728, [navneet.sandhu@usda.gov](mailto:navneet.sandhu@usda.gov).

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**I. Background**

Integrity is essential to meeting the mission of all Child Nutrition Programs. To improve program operations, the Food and Nutrition Service (FNS) works in close collaboration with State and local partners. In the Child and Adult Care Food Program (CACFP), State agencies are responsible for approving and monitoring institutions— independent child and adult care centers and sponsoring organizations of family day care homes and centers—to maintain program integrity and ensure

compliance with program requirements. State agencies have a similar responsibility for oversight of sponsors in the Summer Food Service Program (SFSP).

More than 20 years ago, FNS established a system for protecting CACFP against the incidence of mismanagement, abuse, and fraud by institutions and facilities participating in the program. The serious deficiency process was implemented in response to Federal reviews that revealed critical weaknesses in State agency and institution management controls over program operations. The reviews uncovered examples of regulatory noncompliance by institutions and facilities, including improper use of program funds, inadequate financial and administrative controls, and documented instances of mismanagement and, in some cases, fraud, by program participants.

These findings raised questions regarding Federal and State administration of CACFP that led to increased focus on program management and integrity in CACFP. The Agricultural Risk Protection Act of 2000, Public Law 106–224, established statutory requirements under section 17 of the Richard B. Russell National School Lunch Act (NSLA), at 42 U.S.C. 1766(d)(5), for terminating or suspending participating institutions and day care home providers. The Grains Standards and Warehouse Improvement Act of 2000 and Healthy Hunger-Free Kids Act of 2010, Public Laws 106–472 and 111–296, respectively, further amended those provisions.

In response to the Federal reviews, FNS published guidance to help State agencies implement the statutory requirements relating to a serious deficiency determination, corrective action, suspension, termination, and disqualification of institutions and responsible principals and responsible individuals in CACFP. FNS implemented these as requirements through publication of the *Child and Adult Care Food Program; Implementing Legislative Reforms to Strengthen Program Integrity* interim rule, 67 FR 43447, June 27, 2002; and *Child and Adult Care Food Program Improving Management and Integrity* final rule, 76 FR 34542, June 13, 2011. These rulemakings established a serious deficiency process at 7 CFR 226.6 and 226.16 that requires a process for addressing severe and pervasive problems, with a structured series of steps that give CACFP institutions and day care homes the opportunity for corrective action and due process.

To protect program integrity, these rulemakings implemented procedures that would correct problems in a timely manner. That is why there are corrective action timeframes for completion of corrective action and milestones for monitoring progress towards meeting the deadline. The serious deficiency process for CACFP starts when the State agency identifies a serious problem and concludes when that serious problem is resolved, either through corrective action or by termination and disqualification. The regulations identify lists of serious deficiencies and describe corrective action, termination, and disqualification procedures.

The current CACFP serious deficiency process at 7 CFR 226.6(c) includes procedures to help the State agency document the case to terminate and disqualify non-performing CACFP institutions that are unwilling to or incapable of resolving their serious deficiencies. The process also includes procedures to provide seriously deficient institutions the opportunity to appeal the State agency's adverse actions and to continue to receive payments of valid claims while they receive a fair hearing. CACFP sponsoring organizations implement a similar process to correct serious problems of noncompliance in day care homes, as described in 7 CFR 226.16(l).

Until enactment of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), there were no corresponding statutory requirements for implementing a serious deficiency process for SFSP. However, through HHFKA, Congress established requirements relating to the termination of participation of service institutions which included maintaining a list of disqualified service institutions and individuals. The regulations under 7 CFR 225.6(h) specify criteria State agencies must consider when approving sites for participation; provide authority for the State agency to terminate sponsor participation at 7 CFR 225.11(c); and establish procedures for sponsors to appeal adverse actions, including termination of a sponsor or site and denial of an application for participation, at 7 CFR 225.13. However, SFSP regulations do not currently reflect the statutory requirement to disqualify service institutions and individuals that are seriously deficient from participating in SFSP, or any other Child Nutrition Program, the provision for a fair hearing and prompt determination, or placement on a list of disqualified institutions and individuals.

In developing the proposed rule, *Child Nutrition Program Integrity*, 81 FR 17563, March 29, 2016, FNS applied

existing serious deficiency requirements to establish a serious deficiency process for service institutions and individuals, *i.e.*, sponsors and sites in SFSP and unaffiliated child care centers and unaffiliated adult day care centers in CACFP. To strengthen management practices and eliminate gaps that put program integrity at risk, FNS proposed amendments that would:

- Extend the serious deficiency process to unaffiliated centers in CACFP;
- Implement a serious deficiency process in SFSP;
- Require each SFSP State agency to provide appeal procedures to sponsors, annually and upon request;
- Specify the types of adverse actions that cannot be appealed in SFSP;
- Establish a list of disqualified institutions and individuals 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 the State agency to deny the application of any applicant that has been terminated for cause from any Child Nutrition Program or placed on a CACFP or SFSP list of disqualified institutions and individuals;
- Require the State agency to terminate an agreement whenever a program operator's participation ends; and
- Require action by the State agency to terminate an agreement for cause, through the serious deficiency process or placement on list of disqualified institutions and individuals.

FNS also published a notice, *Request for Information: The Serious Deficiency Process in the Child and Adult Care Food Program*, 84 FR 22431, May 17, 2019, to gather information to help FNS understand firsthand the experiences of State agencies and program operators. An analysis of the comments on the proposed rule and responses to the notice convinced FNS that important modifications were needed to make the application of the serious deficiency process consistent and effective, and to ensure it is in line with current statutory requirements.

On August 23rd, 2023, FNS published the *Child Nutrition Program Integrity* final rule, 88 FR 57792, which codifies changes required under HHFKA to strengthen administration of Child Nutrition Programs, at all levels, through enhanced oversight and enforcement tools. As proposed, the *Child Nutrition Program Integrity* final rule included amendments related to serious deficiency and termination

procedures in SFSP, serious deficiency and termination procedures for unaffiliated sponsored centers in CACFP, and reciprocal disqualification of applicants terminated for cause and placed on the National Disqualified List. However, FNS received comments expressing concern about using the CACFP serious deficiency process as a model for establishing procedures in other Child Nutrition Programs. The comments suggested that FNS further investigate and attempt to address potential inconsistencies in implementation of the serious deficiency process among States. Ultimately, FNS agreed that further changes from what was proposed in the *Child Nutrition Program Integrity* rule are needed to improve the serious deficiency process and ensure its application is fair and fully implemented. Instead of finalizing the proposed rule as it related to the serious deficiency process, FNS decided to pursue a separate rulemaking in order to consider improvements to the serious deficiency process before extending serious deficiency, termination, and disqualification procedures to SFSP.

To better serve administering agencies and program operators, this proposed rule is intended to make the application of the serious deficiency process for CACFP and SFSP consistent, effective and in line with current statutory requirements. FNS proposes improvements to ensure that the serious deficiency process is fair, equitable, and effective. This new rulemaking proposes amendments to CACFP and SFSP regulations that are designed to increase program operators' accountability and operational efficiency, while improving the ability of administering agencies to address severe or repeated violations of Federal requirements.

While minimizing changes to procedures, FNS proposes to add clarity to the serious deficiency process by defining key terms, establishing a timeline for full correction, and establishing criteria for determining when the serious deficiency process must be implemented. This proposed rule also addresses agreements that are terminated for cause, disqualification from participation in CACFP or SFSP, reciprocal disqualification from any Child Nutrition Program, legal requirements for records maintained on individuals on the National Disqualified List, and participation of multi-State sponsoring organizations.

This rulemaking also re-examines the concept of good standing in light of recent rulemaking. The final rule, *Streamlining Program Requirements and Improving Integrity in the Summer*

*Food Service Program (SFSP)*, 87 FR 57304, September 19, 2022, established that a program operator would be considered in “good standing” if it were reviewed by the State agency with no major program findings or it had completed and implemented all corrective actions from the last compliance review. Good standing reflects a program operator’s status and is considered by State agencies as a factor when making decisions around frequency of reviews. Therefore, FNS recognized that providing further clarification to determine what good standing means across all Child Nutrition Programs would benefit State agencies and program operators. This proposed rule would define the status of good standing as a program operator that meets its program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time. This would serve as a general definition that would apply to all program operators across Child Nutrition Programs and would be added to 7 CFR 210.2, 215.2, 220.2, 225.2, and 226.2.

FNS also proposes to reorganize the CACFP and SFSP regulations to improve readability and reduce duplication of information in the serious deficiency process. For CACFP, references to program operations that are seriously deficient and corresponding requirements pertaining to appeals, suspension of participation, termination of agreements, and disqualification are found in multiple sections of existing regulations. This proposed rule would move these requirements into a new single subchapter under 7 CFR 226.25. The other provisions described under 7 CFR part 226, subpart G would be renumbered to correspond with this proposed change. FNS also proposes to reorganize SFSP regulations by collecting all provisions of the serious deficiency process under a single subchapter at 7 CFR 225.18 and renumbering the other sections of 7 CFR part 225, subpart D.

This proposed rule gives the public the opportunity to provide comments that will inform the development of a final rule on the oversight and implementation of the serious deficiency process in CACFP and SFSP. FNS will consider all relevant comments submitted during the 60-day comment period for this rulemaking. FNS invites the public to submit comments on all aspects of this proposed rule, including comments in response to specific program changes that are found throughout this preamble

and alternatives that are suggested for certain provisions. FNS also invites comments from administering agencies and program operators on the administrative cost of compliance and the potential impact on program access of any of the provisions in this rulemaking.

Please select those issues that most concern and affect you, or that you best understand, and include examples of how the proposed rule would impact you, positively or negatively. Consider what could be done to foster incentives for flexibility, consistency, eliminating duplication, ensuring compliance, and protecting program integrity. Your written comments should be specific to the issues raised in this proposed rule and explain the reasons for any changes you recommend or proposals you oppose. Where possible, please reference the specific section or paragraph of the proposal you are addressing and whether the concern is related to either CACFP or SFSP, or both.

## II. Section-By-Section Discussion of the Regulatory Provisions

### A. *Child and Adult Care Food Program (CACFP)*

#### 1. The CACFP Serious Deficiency Process

##### Defining Serious Deficiency

Underlying the concerns of the serious deficiency process is the broader, systemic issue of what constitutes a serious deficiency and how State agencies and sponsoring organizations should utilize the serious deficiency process as an effective tool in managing program operations. Public comments that FNS has received in response to previous rulemakings and informal feedback from CACFP professionals and advocates consistently point out that the lack of defined terminology confuses program administrators and contributes to errors in responding to serious management problems. Before extending the serious deficiency process to unaffiliated centers or establishing a process for SFSP, these stakeholders asked FNS to define terms in 7 CFR 226.2 that align with the statutory structure and are consistent across CACFP and SFSP.

As explained in the *Child and Adult Care Food Program; Implementing Legislative Reforms to Strengthen Program Integrity* interim rule, prior to 2002, the term “serious deficiency” was used to describe program performance at two very different stages of an oversight process. In the first instance, an institution failing to perform under

the terms of its agreement was notified by its State agency that it was seriously deficient in its operation of CACFP and was given an opportunity to take corrective action. Later, if the institution failed to take corrective action during the specified time, its agreement was terminated by the State agency and the institution was placed on a list of seriously deficient institutions. The use of the same term in both instances, as stakeholders pointed out, caused confusion for State agencies and institutions.

The concept of serious deficiency changed when the first interim rule addressing management improvement and oversight, *Child and Adult Care Food Program; Implementing Legislative Reforms to Strengthen Program Integrity*, 67 FR 43447, June 27, 2002, was published. This interim rule amended 7 CFR 226.2 to define seriously deficient as “the status of an institution or a day care home that has been determined to be non-compliant in one or more aspects of its operation of the program.” Serious deficiency is a larger concept in that it reflects the situation before the opportunity for corrective action or the right to appeal is exercised by an institution. In the interim rule preamble, FNS attempted to explain this concept, emphasizing that the serious deficiency process should refer to every action that happens after a serious deficiency is declared, beginning with the determination of the finding, and ending with full and permanent resolution or disqualification.

Although current CACFP regulations define “seriously deficient,” other terms that affect implementation of the current serious deficiency process are not clearly defined. For example, there is no corresponding definition of “serious deficiency” under 7 CFR 226.2. The regulations do not clearly define standards for determining the severity of a problem identified as a finding and when that finding rises to the level of a serious deficiency. The regulations are also ambiguous with regard to differentiating between occasional administrative errors and systemic management problems. Some terms have multiple connotations—for example, administrative review may mean a fair hearing or it may mean an evaluation of program operations—while other terms, such as good standing, are vague or subjective. As public comments and stakeholder feedback have revealed, these gaps have long been of concern to the CACFP community.

Under this proposed rule, the findings that trigger the serious deficiency

process would be defined as serious management problems, which are currently known as serious deficiencies. This term appears in section 17 of the NSLA, at 42 U.S.C. 1766(d), which requires State agencies to conduct more frequent reviews of any institution that has serious management problems or is at risk of having serious management problems. The proposed definition characterizes a serious management problem as the type of administrative weakness that affects an institution's ability to meet CACFP performance standards—financial viability, administrative capability, and program accountability—or that affects the quality of meals served or the integrity of a claim for reimbursement in a day care home or center. For example, a sponsoring organization that operates a variety of community programs may be at risk of serious management problems if it has limited staffing to support program operations or is devoting too small of a share of administrative resources to CACFP. More frequent monitoring by the State agency and sponsoring organization would help improve CACFP operations by identifying and addressing these weaknesses. However, if these measures are not effective, the State agency would have to apply the serious deficiency process to require the sponsoring organization to take specific corrective actions to protect program integrity.

FNS proposes that the serious deficiency process provide program operators with the opportunity to correct serious management problems through a corrective action plan. Institutions would develop corrective action plans to identify the steps they will take to correct serious management problems, or serious deficiencies as they are known under the current process.

Prior to 2011, serious deficiencies were “rescinded” when an institution’s corrective action plan was approved. Unfortunately, rescinding the serious deficiency that early in the process often resulted in later reviews that demonstrated the serious deficiency had not been corrected, or that the corrective action left institutions vulnerable to other serious deficiencies. As a result, FNS changed the process to temporarily defer a finding of serious deficiency. In current regulations at 7 CFR 226.6(c)(1)(iii)(B), (c)(2)(iii)(B), and (c)(3)(iii)(B), the State agency is required to temporarily defer the institution’s serious deficiency. However, under this process, institutions were never able to have their serious deficiency status removed, even after years of reviews with no additional findings. Through this rulemaking, changing the serious

deficiency determination to occur at the point of termination aligns the regulations with statute at section 17 of the NSLA, at 42 U.S.C. 1766(a), which asserts that an institution that has been seriously deficient in operating any Child Nutrition Program cannot be eligible to participate in CACFP.

Terms under the current serious deficiency process have led to confusion. The term “fully and permanently corrected” lacks clarity, particularly in cases where the same findings reoccur and the program operator’s agreement is proposed to be terminated. The term “permanent” is contradictory as it assumes that the same findings cannot arise again, regardless of the amount of time that has passed since the initial findings. The term “temporarily deferred” is confusing and the existing process does not establish limits on the duration of the deferment after corrective actions have taken place. Instead, this proposed rule would create a path to full correction within a defined period of time. When achieved, the serious management problem would be vacated, not deferred. If the same finding occurs after full correction is achieved, it will not lead directly to proposed termination.

FNS recognizes that clearly defined terminology is essential to fully understand and correctly implement the serious deficiency process. FNS proposes to amend 7 CFR 226.2 to clarify existing terms, remove terms that are confusing, and add definitions to terms that had not previously been defined in the regulations. This proposed rule includes the following list of terms that relate to proposed modifications to the serious deficiency process described in this rulemaking:

- *Contingency plan* means the State agency’s written process for the transfer of sponsored centers and day care homes that will help ensure that program meals for children and adult participants will continue to be available without interruption if a sponsoring organization’s agreement is terminated.
- *Corrective action* means implementation of a solution, written in a corrective action plan, to address the root cause and prevent the recurrence of a serious management problem.
- *Disqualified* means the status of an institution, facility, responsible principal, or responsible individual who is ineligible for participation in the program.
- *Fair hearing* means due process provided upon request to:
  - An institution that has been given notice by the State agency of an action

that will affect participation or reimbursement under the program;

- A principal or individual responsible for an institution’s serious management problem and issued a notice of proposed termination and proposed disqualification from program participation; or

- An individual responsible for a day care home or unaffiliated center’s serious management problem and issued a notice of proposed disqualification from program participation.

- *Finding* means a violation of a regulatory requirement identified during a review.

- *Fiscal action* means the recovery of an overpayment or claim for reimbursement that is not properly payable through direct assessment of future claims, offset of future claims, disallowance of overclaims, submission of a revised claim for reimbursement, or disallowance of funds for failure to take corrective action to meet program requirements.

- *Full correction* means the status achieved after a corrective action plan is accepted and approved, all corrective actions are fully implemented, and no new or repeat serious management problem is identified in subsequent reviews, as described in proposed § 226.25(c).

- *Good standing* means the status of a program operator that meets its program responsibilities, is current with its financial obligations, and if applicable, has fully implemented all corrective actions within the required period of time.

- *Hearing official* means an individual who is responsible for conducting an impartial and fair hearing—as requested by an institution, responsible principal, or responsible individual responding to a proposal for termination—and rendering a decision.

- *Lack of business integrity* means the conviction or concealment of a conviction for fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice.

- *Legal basis* means the lawful authority established in statute or regulation.

- *National Disqualified List (NDL)* means a system of records, maintained by the Department, of institutions, responsible principals, and responsible individuals disqualified from participation in the program.

- *Notice* means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by

facsimile, or by email, that describes an action proposed or taken by a State agency or FNS with regard to an institution's program reimbursement or participation. Notice also means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a sponsoring organization with regard to a day care home or unaffiliated center's participation.

- *Program operator* means any entity that participates in one or more Child Nutrition Programs.

- *Responsible individual* means any individual employed by, or under contract with an institution or facility, or any other individual, including uncompensated individuals, who the State agency or FNS determines to be responsible for an institution or facility's serious management problem.

- *Responsible principal* means any principal, as described in this section, who the State agency or FNS determined to be responsible for an institution's serious management problem.

- *Review cycle* means the frequency and number of required reviews of institutions and facilities.

- *Serious management problem* means the finding(s) that relates to an institution's inability to meet the program's performance standards or that affects the integrity of a claim for reimbursement or the quality of meals served in a day care home or center.

- *Seriously deficient* means the status of an institution or facility after it is determined that full corrective action will not be achieved and termination for cause is the only appropriate course of action.

- *State agency list* means an actual paper or electronic list, or the retrievable paper records, maintained by the State agency, that includes information on institutions and day care home providers or unaffiliated centers through the serious deficiency process in that State. The list must be made available to FNS upon request and must include information specified in proposed § 226.25(b).

- *Termination for cause* means the termination of a program agreement due to considerations related to an institution or a facility's performance of program responsibilities under the agreement between:
  - A State agency and the independent center,
  - A State agency and the sponsoring organization,
  - A sponsoring organization and the unaffiliated center, or

- A sponsoring organization and the day care home.

Accordingly, this proposed rule would define additional terms under 7 CFR 226.2 by defining contingency plan, corrective action, fair hearing, finding, fiscal action, full correction, good standing, hearing official, lack of business integrity, legal basis, responsible individual, responsible principal, review cycle, and serious management problem. Definitions of disqualified, National Disqualified List, notice, seriously deficient, State agency list, and termination for cause that are currently listed under 7 CFR 226.2 would be amended. Definitions of administrative review, administrative review official, and the combined term, "responsible principal or responsible individual" would be removed from 7 CFR 226.2.

#### Current Requirements of the CACFP Serious Deficiency Process

Historically, the CACFP serious deficiency process established a systematic way for an administering agency—a State agency or sponsoring organization—to correct problems and protect program integrity. Serious deficiency, termination, and disqualification procedures already exist for institutions, day care homes, responsible principals, and responsible individuals in CACFP under section 17 of the NSLA, 42 U.S.C. 1766(d)(5), and codified in regulations at 7 CFR 226.6(c), 226.6(k), 226.6(l), and 226.16(l).

These procedures give institutions and day care homes the opportunity for corrective action and due process. They are also designed to help administering agencies (State agencies and sponsoring organizations) document the case to terminate and remove from CACFP any program operator that is unwilling or incapable of resolving serious deficiencies that place program integrity at risk. Current CACFP regulations allow only two possible outcomes of the serious deficiency process, either the correction of the serious deficiency to the administering agency's satisfaction within stated timeframes, or the administering agency's proposed termination of the agreement and disqualification of the program operator and its responsible principals and responsible individuals. However, even when the serious deficiency is corrected, it is still only temporarily deferred.

Current §§ 226.6(c) and 226.16(l) describe steps that start when the administering agency identifies a serious deficiency and end when that finding of serious deficiency has been

resolved, either through corrective action or termination and disqualification. FNS has provided guidance for administering agencies on the serious deficiency process, including steps in the *Serious Deficiency, Suspension, and Appeals for State Agencies and Sponsoring Organizations* handbook. These steps include that the administering agency:

1. *Identify a finding that rises to the level of serious deficiency.* There are several factors to consider in deciding that a program finding is a serious deficiency, including the severity of the problem, the degree of responsibility attributable to the program operator, the program operator's past performance and training, the nature of the requirements that relate to the problem, and the degree to which the problem impacts program integrity.

2. *Issue a notice of a serious deficiency.* A formal notice must provide information to the program operator, responsible principals, and responsible individuals that explains all of the cited findings, describes the actions required to fully and permanently correct the serious deficiencies, and provide a definite and appropriate time limit for the corrective action to be implemented.

3. *Receive and assess a written corrective action plan.* The program operator must submit a corrective action plan that describes what actions and management controls have been implemented to address each serious deficiency. The administering agency must evaluate the plan to determine that actions taken to correct each serious deficiency are adequate and that management controls are in place to ensure that the serious deficiencies are fully and permanently corrected.

4. *Issue a notice of temporary deferral of the serious deficiency or a notice of proposed termination and disqualification.* If the program operator submits a corrective action plan that satisfactorily corrects the serious deficiencies within the allotted period of time, the serious deficiency determination is temporarily deferred. The administering agency issues a notice to advise the responsible principals and or responsible individuals that the corrective action is successful and the serious deficiency determination is temporarily deferred. If it is later, at any time, determined that the serious deficiency has recurred, the administering agency must immediately issue a new notice of proposed termination and disqualification. If no corrective action plan is submitted or if the corrective action is not permanent or not adequate, the administering agency

issues a notice of proposed termination for cause and disqualification with appeal rights and procedures.

5. *Provide an appeal of the proposed termination and disqualification if requested by the program operator.* An institution and its responsible principals and responsible individuals may request an in person hearing or an administrative review of documents to determine whether the State agency's actions comply with program requirements. A day care home also has the right to appeal a proposed termination through an administrative review of documents. The day care home may review the record on which the termination decision was based and refute the action in writing. The administrative review official is not required to hold a hearing.

6. *Issue a notice of final termination and disqualification or a notice of temporary deferral.* On the date when the time for requesting an appeal expires or the administrative review official upholds the proposed termination and disqualification, the administering agency immediately terminates the program operator's agreement, disqualifies the program operator and its responsible principals and responsible individuals, and adds their names to the National Disqualified List. If the administrative review official vacates the proposed termination, the administering agency issues a notice to withdraw the serious deficiency determination and temporarily defer the proposed termination.

Once on the National Disqualified List, an institution, day care home, responsible principal, or responsible individual is ineligible to participate in CACFP in any State as an institution, a facility under a sponsoring organization, or as part of a different institution or facility. FNS believes it is critical to the effectiveness of the serious deficiency process that these procedures are consistently applied when an institution or provider is declared seriously deficient. For example, if the serious deficiency process is not completed, an individual who was found responsible for the serious deficiency in one institution might simply re-incorporate under a new name and be admitted to participate in CACFP in another State.

Public comments on prior rulemaking have disclosed that implementation may vary widely. Respondents described weaknesses in existing regulations that created a process that they perceived to be unreasonable, ineffective, and punitive. This perception undermines the goal of the serious deficiency process to strengthen program compliance and integrity. FNS agrees

that improvements to the serious deficiency process are needed to ensure its application is fair and fully implemented. To better serve State agencies and program operators, FNS is proposing modifications that will make the application of the serious deficiency process more consistent and more effective.

#### Proposed Changes to the CACFP Serious Deficiency Process

As noted earlier, FNS has carefully examined the serious deficiency process and the lessons learned through policy development and operational experience, to understand how to address and correct serious management problems in the CACFP. FNS's understanding is that the steps described above have been useful for administering agencies dealing with serious failure to perform, and not just for the worst examples of potential fraud. This proposed rule would maintain the steps that have been proven effective—basic procedures guiding administering agencies in identifying serious management problems, requiring corrective action, providing appeals, continuing payments of valid claims until the appeals are resolved, and taking actions on termination and disqualification. However, based on that examination, several key changes are proposed in this rule.

Currently, the administering agency identifies a serious deficiency violation, which is defined in regulation. For new institutions, current § 226.6(c)(1)(ii) provide that serious deficiencies include the submission of false information and concealment of a conviction during the past 7 years that indicates a lack of business integrity. Examples are provided in current regulation for offenses that indicate a lack of business integrity, with discretion allowed for the State to determine other offenses that may indicate a lack of business integrity or any other action affecting the institution's ability to administer the program in accordance with program requirements.

Under this proposed rule, a program finding identified during a review will no longer be considered a serious deficiency, but a serious management problem, if certain standards are met. This is a change in the terminology used to describe the process of identifying problems that needs correction. While FNS issued a CACFP handbook, *Serious Deficiency, Suspension, and Appeals for State Agencies and Sponsoring Organizations*, in February 2015, which recommends a framework to guide

decision making, the current regulations are unclear about what standards apply to distinguish between errors and more serious findings.

Under this proposed rule, FNS is proposing to codify the criteria found in the CACFP handbook, *Serious Deficiency, Suspension, and Appeals for State Agencies and Sponsoring Organizations*, that the State agency must consider when determining whether a program violation is a serious management problem. This rulemaking also proposes several questions to assist the administering agency. In addition to inviting comments on this proposed rule in general, FNS specifically welcomes public comments on the following five criteria:

1. *The severity of the problem.* Is the noncompliance on a minor or substantial scale? Are the findings indicative of a systemic problem, or is the problem truly an isolated event? There is a point at which continued problems indicate serious mismanagement. Problems that initially appear manageable may become serious if not corrected within a reasonable period of time. Even minor problems may be serious if systemic. Some problems are serious even though they have occurred only once. For example, missing the recording of meal counts at the point of service for one day out of a month could be resolved with technical assistance. However, a second review with the same problem or an initial review with multiple days of incomplete point-of-service meal counts could rise to the level of a serious management problem.

2. *The degree of responsibility attributable to the program operator.* To the extent that evidence is available, can the administering agency determine whether the findings were inadvertent errors of an otherwise responsible institution or facility? Is there evidence of negligence or a conscious indifference to regulatory requirements or is there evidence of deception?

3. *The program operator's history of participation and training in CACFP.* Is this the first time the institution, day care home or unaffiliated center is having problems or has noncompliance occurred frequently at the same institution or facility?

4. *The nature of the requirements that relate to the problem.* Are the program operator's actions a clear violation of CACFP requirements? Has the program operator implemented new policies correctly?

5. *The degree to which the problem impacts program integrity.* Is the finding undermining the intent or purpose of the CACFP, such as misuse of program

funds, or is it simply an administrative error?

Current §§ 226.6(c)(3)(iii)(A) and 226.16(l)(3)(i) require the administering agency to issue a notice of the serious deficiency identified. The program operator must submit a corrective action plan to resolve the serious deficiency. Under this proposed rule, the administering agency would declare the program operator to be seriously deficient at the point of termination. A notice of proposed serious deficiency and proposed termination would be issued after the program operator has been provided an opportunity to correct serious management problems through a corrective action plan. If corrective action is not submitted, not approved, or not implemented, the administering agency would move to propose termination, with the opportunity to request a fair hearing. If the termination is upheld, the agreement is terminated for cause and the program operator is declared seriously deficient.

Current §§ 226.6(c)(3)(iii)(B) and 226.16(l)(3)(i)(B) require the corrective action plan to detail the program operator's response to the notice of serious deficiency. The program operator must submit a written plan that describes the internal controls that are being implemented to ensure that the serious deficiency is fully and permanently corrected. Under this proposed rule, the corrective action plan must address the root causes, *i.e.*, the underlying, true causes, of the serious management problem. By doing so, the corrective action plan should support elimination of the underlying challenges experienced by the program operator for long term program improvement. The program operator would be required to submit a written plan that describes the actions to be taken to correct the root causes of the identified problem, expected period of time for the corrective action to be put into place, and interim milestones for reaching full implementation that would lead to full correction.

Under current § 226.6(c)(3)(iii)(C), a notice of proposed termination and disqualification specifies the same set of outcomes for all types of institutions—the institution is terminated for cause, disqualified, and placed on the National Disqualified List. FNS is considering alternatives for institutions that are school food authorities, including an option that would require termination of the program agreement allowing participation in CACFP, but would not subject the school food authority to disqualification and placement on the National Disqualified List. In the discussion of reciprocal disqualification

in Child Nutrition Programs, under section II–D–3 of this preamble, FNS requests specific input on this proposal to implement an alternative to disqualification for program operators that are school food authorities. Public comments on this alternative will be critical as FNS develops the final rule.

Under current § 226.6(c)(1), if an applying institution does not meet all of the application requirements, the State agency must deny the application and initiate action through the serious deficiency process, which could lead to the disqualification of the new institution, the person who signs the application, and any other responsible principal or responsible individual. However, FNS recognizes that the intent of the serious deficiency process is to address program performance under a legally binding agreement. Under this rulemaking, at proposed § 226.6(c), a separate process—not the serious deficiency process—would provide applicants the opportunity to correct the application and request due process if the application is denied.

While current § 226.2 includes a combined term of “responsible principal or responsible individual,” this proposed rule would set out separate definitions. Each State agency determines which people are responsible for a program operator's serious management problem. In most cases, State agencies designate the executive director, director, and board chair as the positions that would represent the institution or sponsor and be held responsible for any serious management problem. For a for-profit organization, it would include the owner. For a public agency, a responsible principal might also include a supervisor or department head. FNS proposes to require any principals who fill positions that the State agency designates as responsible to certify their role as a responsible principal, as described in the definition.

Under current §§ 226.6(c)(3)(iii)(B)(1)(i) and 226.16(l)(3)(ii), if a corrective action plan is approved and implemented, the program operator's serious deficiency is temporarily deferred and the serious deficiency is considered fully and permanently corrected. If the same finding reoccurs at any time in the future, the serious deficiency process resumes and may lead to termination. Under this proposed rule, if the corrective action plan is approved and implemented within a defined period of time, the administering agency will provide increased oversight and conduct more frequent reviews, as described in proposed §§ 226.6(k)(2)

and 226.16(d)(4)(iv) and (v). Corrective action would no longer be described as permanent. Instead, FNS proposes that the serious deficiency process provide program operators with the opportunity to correct serious management problems through a corrective action plan, which would occur within a defined period of time and result in full correction. When achieved, the serious management problem would be vacated, not deferred.

Temporary deferment would no longer be applicable, because this rulemaking proposes a path to full correction and changes the point at which a program operator is declared seriously deficient to occur at the point of termination. If the same serious management problem occurs after the time period under which full correction is achieved, it would not lead directly to proposed termination. “Full correction” would describe the status achieved after a corrective action plan is accepted and approved, all corrective actions are fully implemented, and no new or repeat serious management problems are identified in at least two full reviews occurring once every 2 years. Additionally, institutions would only achieve “full correction” if the first and last full review is at least 24 months apart and all review, including follow up reviews, in between the first and last full review reveal no new or repeat serious management problems.

Under proposed § 226.25(c)(3)(i), institutions may achieve full correction after at least two full reviews occurring in separate review cycles—with the first and last full review at least 24 months apart reveal no new or repeat serious management problems. A “review cycle” refers to the frequency and number of required reviews of institutions and facilities. The *Child Nutrition Program Integrity Final Rule* amended current § 226.6(m) to require State agencies to review program operators with serious management problems at least once every 2 years. FNS analyzed a large sample of serious deficiency notices and determined that most repeat serious deficiencies occurred within a 2-year period, with many repeat serious deficiencies reoccurring within just a matter of months. As a result, this rulemaking proposes a standard of “two full reviews, occurring once every 2 years and at least 24 months apart” for an institution to achieve full correction. FNS welcomes public comments on this standard.

To understand how the defined period of time for full correction of serious management problems would be determined, consider an example: a State agency cites a sponsoring

organization for a serious management problem in June 2020. The sponsoring organization is now subject to reviews at least once every 2 years. Subsequent full reviews took place in May 2021 and May 2023. Neither reviews revealed new or repeat serious management problems. The sponsoring organization achieved full correction in May 2023. The serious management problems are “fully corrected” if subsequent reviews result in no new or repeat serious management problems over a minimum of two full reviews occurring at least once every 2 years and with the first and last full review taking place at least 24 months apart. The State agency has discretion to conduct reviews more frequently and, in these cases, all reviews must result in no new or repeat serious management findings in order for the sponsoring organization to achieve full correction.

A second example: A State agency reviews a sponsoring organization in June 2020 and identifies a serious management problem. The sponsoring organization submits a corrective action plan that is approved by the State agency and the sponsoring organization enters a 2-year review cycle. The State agency does a follow up review in August 2020 to ensure the corrective action plan has been implemented. The State agency determines that the corrective action plan has been fully implemented. The State agency conducts the first full review in July 2021 and no new or repeat serious management problems are identified. The sponsoring organization is reviewed again in April 2022 and again, no new or repeat serious management problems are identified. Because 24 months have not passed (July 2021 and August 2022) between the first and last full review, the serious management problems are not considered fully corrected. The sponsoring organization receives a full review again in December 2023 and again, no new or repeat serious management problems are identified. At that point, full correction is achieved, *i.e.*, all the reviews revealed no new or repeat serious management problems and at least 24 months passed between the first and last full reviews.

Current §§ 226.6(c)(3)(iii)(B)(3) and 226.16(l)(3)(ii) establish that repeat serious deficiencies may lead directly to proposed termination. If it were discovered that the program operator’s corrective action was not adhered to and the serious deficiency was repeated, the administering agency could resume the serious deficiency process by immediately issuing a notice of proposed termination and disqualification. Under this proposed

rule, a serious management problem that occurs again, after full correction is achieved, would not be considered a repeat serious management problem and would not directly result in proposed termination. However, the recurrence of a serious management problem during the time before full correction is achieved would lead directly to proposed termination. If new serious management problems occur before an institution achieves full correction of its initial serious management problem, the institution would continue to be reviewed once every 2 years until at least two full reviews occurring at least 24 months apart reveal no new or repeat serious management problems.

For another example, consider that a State agency reviews an independent center in April 2021 and identifies a serious management problem. The independent center submits a corrective action plan that is approved by the State agency and the State agency does a follow up review in July 2021 to ensure the corrective action plan has been implemented. The State agency returns to conduct a full review in January 2023 and no new or repeat serious management problems are identified. The State agency conducts a second full review of the independent center in February 2025, the same serious management problem reoccurs. Because full correction was not achieved, this serious management problem is considered repeat. The State agency would propose to terminate the independent center. At this point, the independent center would have a right to a fair hearing.

Current regulations do not define good standing. Under the definition of “good standing” in this proposed rule, the proposed serious deficiency process in CACFP would impact an institution’s good standing status. In the proposed serious deficiency process, identification of a serious management problem would move an institution out of good standing. An institution would need to fully implement all corrective actions and fully pay any debts owed to the program to return to good standing. Until these criteria are met, the institution would remain out of good standing. This proposed standard ensures that the institution is complying with requirements of the serious deficiency process and is working towards achieving full correction of its serious management problem. FNS welcomes public comments on this proposed standard of good standing in the serious deficiency process.

For example, let’s say, a review in May 2022 of a sponsoring organization reveals a serious management problem

that results in an overclaim. At this point, the sponsoring organization would not be in good standing. In June 2022, the State agency conducts a follow up review and determines that the corrective actions are fully implemented and the unearned reimbursement is fully repaid. At this point, at the State agency’s discretion, the sponsoring organization returns to good standing. However, the serious management problem is not yet considered fully corrected.

## 2. Oversight and Implementation of the Serious Deficiency Process in Institutions

State agencies are responsible for oversight of institutions—*i.e.*, sponsoring organizations, independent child care centers, and independent adult day care centers that enter into agreements with the State agency to participate in CACFP. FNS is proposing to modify the serious deficiency process to improve State agency oversight efforts. FNS proposes to codify standards to help State agencies distinguish occasional administrative errors from systemic management problems, determine that corrective action plans are adequate, put in place a fair hearing process that is accessible and fair, and prepare well-written notices of actions throughout the course of the serious deficiency process.

Current program regulations describe serious deficiency notification procedures for participating institutions, responsible principals, and responsible individuals at 7 CFR 226.6(c)(3)(iii). This section includes requirements for the notice of serious deficiency at 7 CFR 226.6(c)(3)(iii)(A). Corrective action is described in 7 CFR 226.6(c)(3)(iii)(B) and (c)(4). Administrative review procedures for the provision of a fair hearing are found at 7 CFR 226.6(k). Termination is at 7 CFR 226.6(c)(3)(iii)(C) and (E) and (c)(4). Disqualification and placement on the National Disqualified List are at 7 CFR 226.6(c)(iii)(E) and (c)(7). FNS proposes to move these requirements from subpart C, State Agency Provisions, to a new subchapter addressing administrative actions under subpart G at 7 CFR 226.25.

This rulemaking proposes to codify standards, under proposed § 226.25(a)(3), to help State agencies distinguish occasional administrative errors from systemic management problems. These standards would guide the State agency’s efforts in identifying systemic errors that reflect an institution’s inability to effectively manage the program as required under



the regulations. The State agency would have to consider:

- The severity of the problem;
- The degree of responsibility attributable to the institution;
- The institution's history of CACFP participation and training;
- The nature of the requirements that relate to the problem; and
- The degree to which the problem impacts program integrity.

An institution would no longer be in good standing if the State agency determines that a finding rises to the level of a serious management problem. Information about the institution and its responsible principals and responsible individuals would be added to the State agency list, which State agencies are required to maintain and update through each step of the serious deficiency process. Requirements for the State agency list in current § 226.6(c)(8) would move to proposed § 226.25(b). Maintenance of this list allows the State agency to track the institution's progress towards resolving each serious management problem.

If the State agency determines that a program finding rises to the level of a serious management problem, the State agency would issue a written notice that is easy to understand, documenting each finding that must be addressed and corrected. The notice requirements in current § 226.6(c)(3)(iii)(A) would move to proposed § 226.25(a)(6)(i). The State agency would send the notice to the institution, the management officials who bear responsibility for the poor performance, and other responsible individuals, including nonsupervisory employees, contractors, and unpaid staff who have been directly involved in causing the serious management problem. A well-written notice will: provide a detailed explanation of each serious management problem; list appropriate regulatory citations to support the notice; identify the responsible principals and responsible individuals; provide a clear description of the actions required in order to correct the serious management problem; and provide a definite and appropriate time limit for the corrective action.

The assessment of corrective action in current § 226.6(c)(3)(iii)(B) would move to proposed § 226.25(c). This proposed rule would require the institution to take corrective action to address the root cause of each finding. At proposed § 226.25(c)(1), this rulemaking outlines the information that would guide the institution's development of a corrective action plan that demonstrates that the noncompliance is resolved. The State agency's approval of the corrective

action plan would include a review of the institution's responses to these questions:

- What is the serious management problem and the action taken to address it?
- Who addressed the serious management problem?
- When was the action taken to address the serious management problem?
- Where is documentation of the corrective action plan filed?
- How were staff and providers informed of the new policies and procedures?

The timelines for corrective action, at proposed § 226.25(c)(2), with an emphasis on correcting problems quickly, remain unchanged from the requirements at current § 226.6(c)(4). Corrective action must be taken within reasonable timeframes established in the current regulations that ensure that each serious management problem is quickly addressed and corrected. The timeframe must fit the type of serious management problem found. The allotted time begins on the date the institution receives the notice—up to 30 days for a false claim or unlawful practice, up to 90 days for correction of other problems, and more than 90 days for management system or process changes, if the State agency determines that a longer time frame is needed. Although the institution may take corrective action at any point in the serious deficiency process, the State agency would issue a notice of proposed termination if any of the deadlines described in proposed § 226.25(c)(2)(ii) through (iv) are not met.

State agencies would have to prioritize monitoring resources to conduct more frequent reviews of institutions with serious management problems. FNS has recently published a final rule, *Child Nutrition Program Integrity*, 88 FR 57792, August 23, 2023, that requires State agencies to schedule reviews at least once every 2 years of institutions that have had serious management problems in previous reviews or are at risk of having serious management problems. This rulemaking would move this requirement from current § 226.6(m) to proposed § 226.6(k).

Current § 226.6(c)(3)(iii)(B)(1) requires the State agency to establish that corrective action is permanent. Proposed § 226.25(c)(3)(i) would take a different approach to the determination of full correction. This proposed rule would create a path to full correction for institutions with serious management problems if at least two full reviews, occurring once every 2 years and the first and last full review occurring at

least 24 months apart demonstrate that the institution has the ability to operate CACFP with no new or repeat serious management problems. Once the State agency approves a corrective action plan, the institution must receive full reviews at least two times and at least once every 2 years before full correction is achieved.

If corrective actions are fully implemented, the State agency would issue a notice to advise the institution, responsible principals, and responsible individuals of successful corrective action. The notice requirements in current § 226.6(c)(3)(iii)(B) would move to proposed § 226.25(a)(6)(ii). The State agency would continue to provide oversight to ensure that the corrective actions to correct the serious management problem remain in place. If corrective action is complete for the institution but not for all the responsible principals and responsible individuals or vice versa, proposed § 226.25(a)(6)(ii)(A)(2) addresses partial achievement of corrective action.

If corrective action is not submitted, approved or implemented, the State agency proposes to terminate the institution. Current § 226.6(k) describes administrative review procedures for the provision of a fair hearing. Termination is described in current § 226.6(c)(3)(iii)(C) and (E) and (c)(4) and disqualification and placement on the National Disqualified List are described in current sections 7 CFR 226.6(c)(3)(iii)(E) and (c)(6). This rulemaking describes procedures the State agency should follow for fair hearings at proposed § 226.25(g), termination for cause at proposed § 226.25(d)(1), notice of serious deficiency status at proposed § 226.25(a)(6)(iii)(B), and placement on the National Disqualified List at proposed § 226.25(e)(2)(i).

Current § 226.6(k) addresses due process. In this rulemaking, proposed § 226.25(g) describes the institution's right to a fair hearing, parameters for conducting a fair hearing, and guidance on the role of the hearing official and the decision-making. The purpose of the fair hearing is limited to a determination by the hearing official that the State agency has complied with CACFP requirements in taking the actions that are under appeal. It is not to determine whether to uphold duly promulgated Federal and State program requirements.

State agencies must provide a fair hearing to institutions when they take actions affecting an institution's participation or its claim for reimbursement, such as application denial, claim denial, overpayment

demands. During the serious deficiency process, the State agency's issuance of a notice of proposed termination is the only action that is subject to administrative review. Although FNS proposes to replace the term "administrative review" with the term "fair hearing," and move the requirements from current § 226.6(k)(5) to proposed § 226.25(g)(2), the provision of due process remains unchanged, which is:

- The State agency must give notice of the proposed termination and procedures for requesting a fair hearing to the institution, its executive director, board chair, owner, any other responsible principals and responsible individuals.

- The State agency's notice must specify the basis for proposing termination and the procedures under which the institution, responsible principals, or responsible individuals may request a fair hearing.

- The appellant must submit a written request for a fair hearing within 15 calendar days of receipt of State agency's notice of proposed termination. If the State agency's fair hearing procedures direct the appellant to send the request to the hearing official, then the procedures must identify which office will be responsible for acknowledging the appellant's request.

- The State agency must acknowledge receipt of the fair hearing request within 10 calendar days of receiving it.

- If a fair hearing is requested, the State agency must continue to pay any valid claims for reimbursement of eligible meals served and allowable administrative expenses incurred until the hearing official issues a decision.

- Any information upon which the State agency based the proposed termination must be available to the appellants for inspection from the date of receipt of the hearing request.

- Appellants may contest the proposed termination in person or by submitting written documentation to the hearing official.

- Appellants may represent themselves, retain legal counsel, or be represented by another person.

- All documentation must be submitted prior to the beginning of the hearing. All parties, including the State agency, must submit written documentation to the hearing official within 30 calendar days of receipt of the notice of proposed termination.

- Hearing officials must be independent and impartial. Even if they are employees of the State agency, hearing officials cannot be involved in the action that is the subject of the fair hearing, cannot occupy any position

which would potentially subject to them to undue influence from other State employees who are responsible for the State agency's action, or have any direct personal or financial interest in the outcome of the fair hearing.

- Hearing officials must issue decisions within 60 calendar days of the State agency's receipt of the appellants' hearing request, based solely on the information provided by the parties. 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 fair hearing process.

- The hearing official's decision is the final administrative decision. Appellants may not administratively contest the hearing official's decision.

If the appellant prevails, the State agency would issue a notice that confirms that the proposed termination of the institution, responsible principals, and responsible individuals is vacated, as described in proposed § 226.25(a)(6)(iii)(A). However, the institution would still have to implement procedures and policies to fully correct the serious management problem.

If the hearing official upholds the State agency's proposed termination action, the State agency would immediately notify the institution, executive director, owner, board chair, and any other responsible principals and responsible individuals that the institution's agreement is terminated, as described in proposed § 226.25(a)(6)(iii)(B). It is at this point in the process that this rulemaking proposes to declare the institution seriously deficient. The State agency would issue a serious deficiency notice that informs the institution, responsible principals, and responsible individuals of their disqualification from CACFP participation. Termination of the agreement and disqualification described in current § 226.6(c)(3)(iii)(E) would move to proposed § 226.25(d) and proposed § 226.25(e), respectively. The State agency would provide a copy of the serious deficiency notice to FNS, with the mailing address and date of birth for each responsible principal and responsible individual, and the full amount of any determined debt associated with the institution, responsible principals, and responsible individuals, for inclusion on the National Disqualified List. Requirements at current § 226.6(c)(6) describing placement on the National Disqualified List would move to proposed § 226.25(e)(2).

Proposed § 226.25(h) addresses the State agency's responsibilities for the payment of valid claims found in current § 226.6(c)(5)(i)(D); collection of unearned payments found in current § 226.14(a); suspension of payments found in current § 226.6(c)(5)(ii)(E); and State liability for payments found in current § 226.6(h)(11). Requirements from current § 226.6(c)(iii)(6) for State agency action in response to the independent determination of a serious management problem by FNS would move to proposed § 226.25(i).

Accordingly, this proposed rule would amend CACFP regulations by removing the requirements describing termination of a participating institution's agreement, including serious deficiency notification procedures, successful corrective action, agreement termination, corrective action timeframes, administrative review, and State agency list, under 7 CFR 226.6(c) and (k). This rulemaking proposes to address all requirements for State agency oversight and implementation of the serious deficiency process in institutions under 7 CFR 226.25. Corresponding amendments are proposed at 7 CFR 226.2, 226.6(b)(1) and (2), 226.6(c), (k), and (m)(3), and 226.16(l).

### 3. Oversight and Implementation of the Serious Deficiency Process in Day Care Homes and Unaffiliated Sponsored Centers

Sponsoring organizations enter into agreements with day care homes, unaffiliated child care centers, and unaffiliated adult day care centers to oversee their participation and meal service operations. The sponsoring organization is financially responsible for any meals served incorrectly or served to ineligible children and adults, making it even more important that serious management problems are properly identified and corrected.

The serious deficiency process offers a clear way for sponsoring organizations to take actions guiding day care homes and unaffiliated centers to correct problems that affect the integrity of their meal service operations. It gives day care homes and centers the opportunity for improvement, technical assistance, and due process. For sponsoring organizations, it is a critical tool for resolving performance issues and correcting serious management problems at the operational level.

Current program regulations describe serious deficiency notification procedures for participating day care homes at 7 CFR 226.16(l)(3). This section includes requirements for the notice of serious deficiency at 7 CFR

226.16(l)(3)(i). Corrective action is described in 7 CFR 226.16(l)(3)(ii). Administrative review procedures for the provision of a fair hearing are found at 7 CFR 226.6(l). Termination and disqualification are described at 7 CFR 226.16(l)(3)(iii) and (v). FNS proposes to move these requirements of the serious deficiency process for day care homes to a new subchapter addressing administrative actions under subpart G at 7 CFR 226.25. This proposed rule would also require sponsoring organizations to follow these procedures to implement the serious deficiency process for unaffiliated centers.

Under this proposed rule, many of the sponsoring organization responsibilities and actions would be identical to the provisions outlined for State agencies. However, FNS is proposing key changes to not only recognize CACFP requirements that are simplified for day care homes, but also to distinguish between the center that participates directly under the State agency and the center that elects to participate through a sponsoring organization.

Part of a strong and sustained effort to ensure program integrity is the enhanced oversight that sponsoring organizations provide day care homes and unaffiliated centers. For example, while the State agency is generally required to conduct onsite reviews at least once every 2 or 3 years, depending on the size and circumstances of the institution being reviewed, a sponsoring organization will have conducted a minimum of six to nine reviews of each of its day care homes and unaffiliated centers during the same time period. The serious deficiency process that FNS proposes for day care homes and unaffiliated centers takes into account the additional monitoring, training, and technical assistance that sponsoring organizations must provide.

This rulemaking proposes to codify standards, under proposed § 226.25(a)(3), to help sponsoring organizations distinguish occasional administrative errors from systemic management problems. The sponsoring organization would have to consider:

- The severity of the problem;
- The degree of responsibility attributable to the day care home or unaffiliated center;
- The day care home or unaffiliated center's history of CACFP participation and training;
- The nature of the requirements that relate to the problem; and
- The degree to which the problem impacts program integrity.

Whenever a sponsoring organization identifies a serious management problem, the day care home or

unaffiliated center can no longer be considered to be in good standing. The sponsoring organization must provide information to the State agency to keep the State agency list updated through each step of the serious deficiency process. Current § 226.6(c)(7) requires the State agency list to include information about institutions and day care homes that are seriously deficient. This proposed rule would expand the list to include information on any unaffiliated center that has a serious management problem, as described in proposed § 226.25(b).

Current § 226.16(l)(3)(i) addressing the notice of serious deficiency would move to proposed § 226.25(a)(7)(i). If the sponsoring organization determines that a program finding rises to the level of a serious management problem, the sponsoring organization would issue a notice documenting, in plain language, each serious management problem that must be corrected. The sponsoring organization would issue the notice to the day care home provider, center director, and any other responsible principals or responsible individuals who have been directly involved in causing the serious management problem. A well-written notice will: provide a detailed explanation of each serious management problem; list appropriate regulatory citations to support the notice; identify the responsible principals and responsible individuals; provide a clear description of the actions required in order to correct the serious management problem; and provide a definite time limit for the corrective action.

Corrective action described in current § 226.16(l)(3)(ii) would move to proposed § 226.25(c). Day care homes and unaffiliated centers would be required to take corrective action to address each serious management problem. The day care home or unaffiliated center would submit a written corrective action plan for the sponsoring organization to approve. The corrective action plan would have to address the root cause of each finding, with enough detail explaining the implementation—*i.e.*, what, how, when, and by whom—for the sponsoring organization to make an assessment regarding its effectiveness in fully correcting the serious management problem. It would also describe where the documentation of changes will be filed.

The emphasis of the timeline for corrective action is on correcting problems quickly, as described in current § 226.16(l)(3)(i)(C). Under proposed § 226.25(c)(2)(i), day care homes and unaffiliated centers would

have up to 30 days to take corrective action that, in the sponsoring organization's judgment, will correct the serious management problem. Although corrective action may occur at any point in the serious deficiency process, the sponsoring organization would issue a notice of serious deficiency if the 30-day deadline is not met.

If the corrective action plan is accepted, the sponsoring organization would confirm that the corrective actions are fully implemented. Current § 226.16(l)(3)(ii) temporarily defers a determination of serious deficiency if the sponsoring organization establishes that corrective action is successful. This proposed rule would create a path to full correction if follow-up reviews, as described in current § 226.16(d)(4)(v), demonstrate that the day care home or unaffiliated center has the ability to operate CACFP with no new or repeat serious management problems. The day care home or unaffiliated center would be reviewed at the same frequency as existing regulations require, as described in current § 226.16(d)(4)(iii). Full correction is achieved when, after three consecutive reviews are complete, the day care home or unaffiliated center demonstrates that it has no new or repeat serious management problems, as described in proposed § 226.25(c)(3)(ii) and (iii). After full correction is achieved, any recurrence of the same serious management problem would require the sponsoring organization to issue a new notice to restart the serious deficiency process. Serious management problems that occur after full correction is achieved would not lead to an immediate proposal of termination. However, as described in proposed § 226.25(c)(3)(iv), the recurrence of a serious management problem before full correction is achieved would lead directly to proposed termination.

Successful corrective action is described in current § 226.16(l)(3)(ii). If corrective actions are fully implemented, the sponsoring organization would issue a notice of successful corrective action to the day care home, unaffiliated center, responsible principals, and responsible individuals of, as described in proposed § 226.25(a)(7)(ii)(A). The sponsoring organization would continue to provide oversight to ensure that the procedures and policies to fully correct the serious management problem are implemented.

Current § 226.16(l)(3)(iii) and (v) address the sponsoring organization's actions when full and permanent correction is not achieved. If the corrective action plan is not accepted or a repeat serious management problem occurs before full correction is achieved,

this proposed rule describes the procedures the sponsoring organization would follow for fair hearings at proposed § 226.25(g)(1)(ii) and (g)(2), termination for cause and notification of serious deficiency status at proposed § 226.25(a)(7)(iii), and placement on the National Disqualified List at proposed § 226.25(e)(2).

The sponsoring organization would issue a proposed termination notice, and a fair hearing would be offered. If a fair hearing is requested and the fair hearing upholds the proposal to terminate or the time frame for requesting a fair hearing has passed, the sponsoring organization would issue a notice of serious deficiency and termination. If the fair hearing vacates the proposed termination, the sponsoring organization would issue a notice to vacate the proposed termination as described in proposed § 226.26(c)(7)(iii)(A). However, the day care home or unaffiliated center must still implement procedures and policies to fully correct the serious management problem.

As described in current § 226.6(l)(1), the State agency will continue to have authority to decide whether a fair hearing will be heard by the state or by the sponsoring organization. As described in proposed § 226.25(g)(3), hearing officials, whether retained by the state or the sponsoring organization, must be independent, impartial, and have no involvement in the action that is the subject of the fair hearing. Their decisions must be based on a review of written submissions by all parties. They are not required to hold an in-person hearing for day care homes or unaffiliated centers.

If the hearing official upholds the proposed termination, the sponsoring organization would immediately notify the day care home provider, center director, owner, board chair, and any other responsible principals and responsible individuals that the agreement is terminated, as described in proposed § 226.25(c)(7)(iii)(B). This would also be the point in the process when the day care home or unaffiliated center would be declared seriously deficient. The sponsoring organization would issue a serious deficiency notice that informs the day care home, unaffiliated center, responsible principals, and responsible individuals of their disqualification from CACFP participation.

The sponsoring organization would provide a copy of the serious deficiency notice to the State agency, with the mailing address and date of birth for each responsible principal and responsible individual, and the full

amount of any determined debt associated with the day care home or unaffiliated center. The State agency would continue to update the State agency list and provide this information to FNS for inclusion on the National Disqualified List.

Accordingly, this proposed rule would amend CACFP regulations by removing the requirements describing the termination of agreements for cause, including serious deficiency notification procedures, under 7 CFR 226.16(l). This rulemaking would address all requirements for sponsoring organization oversight and implementation of the serious deficiency process in day care homes and unaffiliated centers under 7 CFR 226.25.

#### *B. Summer Food Service Program (SFSP)*

##### 1. Applying the Serious Deficiency Process to SFSP

Section 13 of the NSLA, at 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 must also maintain a disqualification list for State agencies to use in approving or renewing sponsor applications.

Prior to enactment of the Healthy Hunger-Free Kids Act of 2010, SFSP regulations included provisions addressing corrective action, termination, and appeals. Current SFSP regulations specify:

- Criteria State agencies must consider when approving sites for participation; provide authority for the State agency to terminate sponsor participation, as described in 7 CFR 225.6(h);
- List the types of program findings that would be grounds for application denial or termination, as described in 7 CFR 225.11(c);
- Require State agencies to terminate participation of sites or sponsors for failure to correct program findings within timeframes specified in a corrective action plan as described in 7 CFR 225.11(f); and
- Set out procedures for sponsors to appeal adverse actions, including termination of a sponsor or site and denial of an application for participation, as described in 7 CFR 225.13.

However, the regulations do not provide explicit authority to FNS or

State agencies to disqualify sponsors or any of the people who are responsible for the types of findings that weaken program management and integrity. Under the Healthy Hunger-Free Kids Act of 2010, Congress established requirements related to service institutions that were terminated, including maintaining a list of disqualified service institutions and individuals. To implement those requirements, in this proposed rule, specific steps are provided to establish a serious deficiency process in SFSP, building on the proposals outlined in the previous sections of this preamble. This rulemaking also proposes expansion of the National Disqualified List, establishment of State agency lists, and changes to termination and appeal procedures that would hold sponsors, responsible principals, and responsible individuals accountable for serious management problems in SFSP. These modifications are set out in the regulatory text section of this rulemaking in proposed § 225.18.

In applying the serious deficiency process to SFSP, this rulemaking would expand the list of defined terms under 7 CFR 225.2. This rulemaking proposes definitions of the following terms that relate to important aspects of program management and the serious deficiency process:

- *Contingency plan* means the State agency's written process for the transfer of sponsored site service area that will help ensure that Program meals for children will continue to be available without interruption if a sponsor's agreement is terminated.
- *Corrective action* means implementation of a solution, written in a corrective action plan, to address the root cause and prevent the recurrence of a serious management problem.
- *Disqualified* means the status of a sponsor, responsible principal, or responsible individual who is ineligible for participation in the program.
- *Fair hearing* means due process provided upon request to:
  - A sponsor that has been given notice by the State agency of an action that will affect participation or reimbursement under the program;
  - A principal or individual responsible for a sponsor's serious management problems and issued a notice of proposed termination and proposed disqualification from Program participation; or
  - A sponsor that has been given notice of proposed termination.
- *Finding* means a violation of a regulatory requirement identified during a review.

- *Fiscal action* means the recovery of an overpayment or claim for reimbursement that is not properly payable through direct assessment of future claims, offset of future claims, disallowance of overclaims, submission of a revised claim for reimbursement, disallowance of funds for failure to take corrective action to meet program requirements.

- *Full correction* means the status achieved after a corrective action plan is accepted and approved, all corrective actions are fully implemented, and no new or repeat serious management problems are identified in subsequent reviews, as described in proposed § 225.18(c)(3).

- *Good standing* means the status of a program operator that meets its program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time.

- *Hearing official* means an individual who is responsible for conducting an impartial and fair hearing—as requested by a sponsor, responsible principal, or responsible individual responding to a proposal for termination—and rendering a decision.

- *Lack of business integrity* means the conviction or concealment of a conviction for fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice.

- *Legal basis* means the lawful authority established in statute or regulation.

- *National Disqualified List* (NDL) means a system of records, maintained by the Department, of sponsors, responsible principals, and responsible individuals disqualified from participation in the program.

- *Notice* means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a State agency or FNS with regard to a sponsor's program reimbursement or participation.

- *Principal* means any individual who holds a management position within, or is an officer of, a sponsor or a sponsored site, including all members of the sponsor's board of directors or the sponsored site's board of directors.

- *Program operator* means any entity that participates in one or more child nutrition programs.

- *Responsible individual* means any individual employed by, or under contract with a sponsor or an

individual, including uncompensated individuals, who the State agency or FNS determines to be responsible for a sponsor's serious management problems.

- *Responsible principal* means any principal, as described in this section, who the State agency or FNS determines to be responsible for a sponsor's serious management problems.

- *Review cycle* means the frequency and number of required reviews of sponsors and sites.

- *Serious management problem* means the finding(s) that relate to a sponsor's inability to meet the program's performance standards or that affect the integrity of a claim for reimbursement or the quality of meals served at a site.

- *Seriously deficient* means the status of a sponsor after it is determined that full correction has not been achieved and termination for cause is the only appropriate course of action.

- *State agency list* means an actual paper or electronic list, or the retrievable paper records, maintained by the State agency, that includes information on sponsors through the serious deficiency process in that State. The list must be made available to FNS upon request and must include information specified in proposed § 225.18(b).

- *Termination for cause* means the termination of a Program agreement due to considerations related to a sponsor's performance of Program responsibilities under the agreement between the State agency and sponsor.

Accordingly, this proposed rule would amend 7 CFR 226.2 by adding definitions for contingency plan, corrective action, disqualified, fair hearing, finding, fiscal action, full correction, good standing, hearing official, lack of business integrity, legal basis, National Disqualified List, notice, principal, program operator, responsible individual, responsible principal, review cycle, serious management problem, seriously deficient, State agency list, and termination for cause.

## 2. Oversight and Implementation of the Serious Deficiency Process in SFSP

Sponsors that enter into agreements with the State agency to operate SFSP must be able to assume responsibility for the entire administration of the program at all their meal service sites. They are required to demonstrate that they have the necessary financial and administrative capability to comply with SFSP requirements. If a sponsor is unable to properly manage the program, the serious deficiency process provides a clear way for the State agency to

identify and correct serious management problems and improve integrity of meal service operations at the local level.

Although SFSP and CACFP are autonomous programs with unique operational requirements, they are often administered by the same State agency. To facilitate consistent and equitable application of the serious deficiency process, within and across States, FNS proposes a set of procedures for SFSP that is similar to the modifications this rulemaking proposes to make in CACFP.

As in CACFP, the intent of the serious deficiency process for SFSP is to offer a systematic way for an administering agency to correct problems and protect program integrity. The process would include procedures to identify serious management problems—what 7 CFR part 225 refers to as significant operational problems—and provide opportunities for corrective action and due process. The steps of the serious deficiency process would also be designed to help the State agency document the case to terminate and remove any sponsor that is unwilling to or incapable of resolving serious management problems that place program integrity at risk.

This proposed rule would reorganize existing regulations into a new subchapter at 7 CFR 225.18, amend termination procedures, and establish a disqualification process similar to the process employed in CACFP, with modifications reflecting the shorter duration of meal service operations in SFSP. For example, the proposed maximum timeframe for which the corrective action plan may be implemented in SFSP would be up to 10 calendar days, whereas in CACFP the maximum timeframe could be up to 90 calendar days for institutions.

To examine how State agencies can minimize risk to SFSP integrity, this rulemaking proposes to codify standards under proposed § 225.18(a) to help State agencies distinguish occasional administrative errors from systemic management problems. These standards would guide the State agency's efforts in identifying systemic errors that reflect sponsor's inability to effectively manage the program as required under the regulations. The State agency would have to consider the following criteria, which FNS welcomes public comments on:

1. *The severity of the problem.* Is the noncompliance on a minor or substantial scale? Are the findings indicative of a systemic problem or is the problem truly an isolated event? There is a point at which continued problems indicate serious

mismanagement. Problems that initially appear manageable may become serious if not corrected within a reasonable period of time. Even minor problems may be serious if systemic. Some problems are serious even though they have occurred only once. For example, missing the recording of meal counts at the point of service for one day out of a month could be resolved with technical assistance. However, a second review with the same problem or an initial review with multiple days of incomplete point-of-service meal counts could rise to the level of a serious management problem.

2. *The degree of responsibility attributable to the sponsor.* To the extent that evidence is available, can the State agency determine whether the findings were inadvertent errors? Is there evidence of negligence or a conscious indifference to regulatory requirements, or even worse, is there evidence of deception?

3. *The sponsor's history of participation and training in SFSP.* Is this the first time the sponsor is having problems or has noncompliance occurred frequently?

4. *The nature of the requirements that relate to the problem.* Are the sponsor's actions a clear violation of SFSP requirements? Has the sponsor implemented new policies correctly?

5. *The degree to which the problem impacts program integrity.* Is the finding undermining program intent or purpose, such as misuse of program funds, or is it simply an administrative error?

When the State agency identifies a serious management problem, the sponsor can no longer be in good standing. At proposed § 225.18(b), this proposed rule would require the State agency to maintain a State agency list to track each sponsor's progress towards resolving each serious management problem. The State agency would add information about the sponsor and its responsible principals and responsible individuals to the list and keep the list updated through each step of the serious deficiency process.

If the State agency determines that a finding rises to the level of a serious management problem, the State agency would issue a notice documenting in plain language each problem that must be addressed and corrected, as described under proposed § 225.18(a)(6)(i). The State agency would send the notice to the sponsor, the management officials who bear responsibility for the poor performance, and other responsible principals and individuals, including nonsupervisory employees, contractors, and unpaid staff who have been directly involved in

causing the serious management problem. A well-written notice will: provide a detailed explanation of each serious management problem; list appropriate regulatory citations to support the notice; identify the responsible principals and responsible individuals; provide a clear description of the actions required in order to fully correct the serious management problem; and provide a definite and appropriate time limit for the corrective action.

At proposed § 225.18(c)(1), this proposed rule outlines the information that would guide the sponsor's development of a corrective action plan that would address the root cause of each finding, while also demonstrating that the noncompliance is resolved. The State agency's approval of the corrective action plan would include a review of the sponsor's responses to these questions:

- What is the serious management problem and the action taken to address it?
- Who addressed the serious management problem?
- When was the action taken to address the serious management problem?
- Where is documentation of the corrective action plan filed?
- How were the sponsor's staff informed of the new policies and procedures?

The section on assessing corrective action at proposed § 225.18(c)(2), requires a short timeline to ensure that problems are corrected quickly, particularly given SFSP's brief period of operation. If corrective action cannot be achieved, the regulations describe procedures the State agency should follow for fair hearings, termination for cause, notices of serious deficiency status, and placement on the National Disqualified List. Although corrective action may occur at any point in the serious deficiency process, the State agency would issue a notice of proposed termination if the deadline described in proposed paragraph (c)(2) is not met.

If corrective action is fully implemented, the State agency would issue a notice to advise the sponsor, responsible principals, and responsible individuals of successful corrective action, as described in proposed § 225.18(a)(6)(ii)(A). The State agency would continue to provide oversight to ensure that the procedures and policies the sponsor implemented to fully correct the serious management problem are still in place. If corrective action is complete for some but not all of the serious management problems, proposed § 225.18(a)(6)(ii)(A)(2)

addresses partial achievement of corrective action. If corrective actions are not implemented, this rulemaking describes procedures the State agency should follow for fair hearings in proposed § 225.18(f), notice of serious deficiency status in proposed § 225.18(a)(6)(iii)(B), termination for cause in proposed § 225.18(d), and placement on the National Disqualified List in proposed § 225.18(e)(2).

This proposed rule would create a path to full correction if at least two full reviews, occurring once every year—with the first and last full review occurring at least 12 months apart—demonstrate that the sponsor has the ability to operate SFSP with no new or repeat serious management problems. Additionally, all reviews in between the first and last full review, including follow up reviews, would need to demonstrate that the sponsor has no new or repeat serious management problems. As described under proposed § 225.18(c)(3), once the State agency approves a corrective action plan, the sponsor must be reviewed at least two times, at least once every year, before full correction is achieved. Current § 225.7(e)(4)(ii) requires the State agency to annually review every sponsor that has experienced significant operational problems in the prior year. This proposed rule would make a corresponding change to replace the term "significant operational problem" with the term "serious management problem." Serious management problems would be considered fully corrected if two consecutive reviews—one full review each year for 2 years and at least 12 months apart—indicate no new serious management problems or no repeat of a serious management problem. FNS welcomes public comments on this standard.

For example, let's say a State agency reviews a sponsor in June 2022 and identifies a serious management problem. The sponsor submits a corrective action plan that is approved by the State agency and sponsor enters a once every year review cycle. The State agency does a follow up review in August of 2022 to ensure that actions are fully implemented. The State agency determines that the corrective action plan has been fully implemented and all debts owed to the program are fully repaid. At this point the sponsor returns to good standing. The State agency conducts a full review in June of 2023 and again in June of 2024. All reviews reveal no new or repeat serious management problems and the first and last full review are at least 12 months apart. At this point, the sponsor's serious management problem is

considered fully corrected and the sponsor has achieved full correction.

Under proposed § 225.18(c)(3)(iv), a serious management problem that occurs again, after full correction is achieved, would not be considered a repeat serious management problem and would not directly result in proposed termination. However, the recurrence of a serious management problem before full correction is achieved would be considered repeat and would lead directly to proposed termination. If new serious management problems occur before a sponsor achieves full correction of its serious management problems, the sponsor would continue to be reviewed at least once every year until at least two full reviews—with the first and last review occurring at least 12 months apart—reveal no new or repeat serious management problems.

State agencies must provide appeal rights when they take actions affecting a sponsor or site's participation, claim for reimbursement, request for advance payments, or registration of a food service management company, as described in current § 225.13(a). Appeal procedures, which are described in current § 225.13(b), would be replaced by the fair hearing procedures of the serious deficiency process, at proposed § 225.18(f). This section describes the sponsor's right to a fair hearing, parameters for conducting a fair hearing, and guidance on the role of the hearing official and the decision-making.

The purpose of the fair hearing is limited to a determination by the hearing official that the State agency has complied with SFSP requirements in taking the actions that are under appeal. As with CACFP, it is not to determine whether to uphold duly promulgated Federal and State program requirements. FNS welcomes comments on the following points at issue. As described in proposed § 225.18(f), this rulemaking proposes the following set of actions:

- The State agency must give notice of the proposed termination and procedures for requesting a fair hearing to the sponsor, its executive director, board chair, and any other responsible principals and responsible individuals.

- The State agency's notice must specify the basis for proposing termination and the procedures under which the sponsor, responsible principals, or responsible individuals may request a fair hearing.

- The appellant must submit a written request for a fair hearing within 10 calendar days after receipt of the State agency's notice of proposed termination. If the State agency's fair hearing procedures direct the appellant

to send the request to the hearing official, then the procedures must identify which office will be responsible for acknowledging the appellant's request.

- The State agency must acknowledge receipt of the fair hearing request within 5 calendar days of receiving it.

- If a fair hearing is requested, the State agency must continue to pay any valid claims for reimbursement of eligible meals served until the hearing official issues a decision.

- Any information upon which the State agency based the proposed termination must be available to the appellants for inspection from the date of receipt of the hearing request.

- Appellants may contest the proposed termination in person or by submitting written documentation to the hearing official.

- Appellants may represent themselves, retain legal counsel, or be represented by another person.

- All documentation must be submitted prior to the beginning of the hearing. All parties, including the State agency, must submit written documentation to the hearing official within 20 calendar days after sponsor's receipt of the notice of proposed termination.

- Hearing officials must be independent and impartial. Even if they are employees of the State agency, hearing officials cannot be involved in the action that is the subject of the fair hearing, cannot occupy any position which would potentially subject them to undue influence from other State employees who are responsible for the State agency's action, or have any direct personal or financial interest in the outcome of the fair hearing.

- Hearing officials must issue decisions within 30 calendar days of the State agency's receipt of the appellants' hearing request, based solely on the information provided by the parties. 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 fair hearing process.

- The hearing official's administrative decision is final. Appellants may not administratively contest the hearing official's decision.

If the appellant prevails, the State agency would issue a notice that confirms the proposed termination of the sponsor, responsible principals, and responsible individuals is vacated, as described in proposed § 225.18(a)(6)(iii)(A). However, the sponsor would still have to implement

procedures and policies to fully correct the serious management problem.

If the hearing official upholds the State agency's proposed termination action, the State agency would immediately notify the sponsor, executive director, board chair, and any other responsible principals and responsible individuals that the sponsor's agreement is terminated, as described in proposed § 225.18(a)(6)(iii)(B). As with CACFP, it is at this point in the process that this rulemaking proposes to declare the sponsor seriously deficient. The State agency would issue a serious deficiency notice that informs the sponsor, responsible principals, and responsible individuals of their disqualification from SFSP participation. This proposed rule describes termination of the agreement at proposed § 225.18(d) and disqualification at proposed § 225.18(e).

The State agency would provide a copy of the serious deficiency notice to FNS, with the mailing address and date of birth for each responsible principal and responsible individual, and the full amount of any determined debt associated with the sponsor, responsible principals, and responsible individuals, for inclusion on the National Disqualified List. Requirements at proposed § 226.25(e)(2) describe placement on the National Disqualified List. Extension of the National Disqualified List to SFSP would make a list of disqualified sponsors and individuals available to State agencies to use in approving or renewing sponsor applications.

Proposed § 225.18(g) addresses the State agency's responsibilities for the payment of valid claims and the collection of unearned payments. Requirements for State agency action in response to the independent determination of a serious management problem by FNS is described in proposed § 225.18(h).

Accordingly, this proposed rule would establish a serious deficiency process to address serious management problems in SFSP. This rulemaking would address State agency oversight and implementation of the serious deficiency process under 7 CFR 225.18. Corresponding amendments are proposed at 7 CFR 225.2, 225.6(b)(9), 225.11(c), and 225.13.

### C. Suspension

Section 17 of the NSLA, at 42 U.S.C. 1766(d)(5), recognizes that there are circumstances that may require the immediate suspension of program operations, where continued participation in CACFP is inappropriate because health, safety, or program

integrity are at risk. Current §§ 226.6(c)(5)(i) and 226.16(l)(4) describe a set of actions that an administering agency must implement if a program operator's participation poses an imminent threat to the health or safety of children, adult participants, or the public. Under current § 226.6(c)(5)(ii), the regulations outline administrative procedures when a State agency determines a false or fraudulent claim is submitted. There is no corresponding statute or regulations for suspension of participation in SFSP.

Suspension requirements would move to proposed § 226.25(f). FNS does not propose any procedural changes for administering agencies when there is an imminent threat to health and safety through the suspension process. However, FNS is proposing to strengthen requirements for State agency action when a program operator knowingly submits a false or fraudulent claim. Proposed § 226.25(f)(2) would require State agencies to exercise their authority to suspend CACFP participation when it is determined that a claim for reimbursement is fraudulent or cannot be verified with required documentation.

This rulemaking also includes technical amendments to correspond with the proposed changes in terminology and reorganization of the serious deficiency process regulations. Under proposed § 226.25(f), a suspension would remain in effect until the serious management problem is corrected, as in the case of a suspension based on a false or fraudulent claim, or a fair hearing of the proposed termination is completed. Although the agreement is not formally terminated, a program operator cannot participate in CACFP during the period of suspension.

#### Suspension for Health or Safety Threat

CACFP participation must be suspended if an imminent threat is identified that places the health or safety of children, adult participants, or the public at risk. The suspension is immediate and cannot be appealed. The administering agency must notify the program operator, responsible principals, and responsible individuals that participation and payments are suspended and termination and disqualification are proposed. The notice must identify the serious management problem and include procedures for requesting a fair hearing of the proposed termination and disqualification, as described in current §§ 226.6(c)(5)(i)(B) and 226.16(l)(4)(ii). Proposed § 226.25(f)(1)(i)(A) would address the notice of suspension of an institution and proposed

§ 226.25(f)(1)(ii)(A) would address the notice of suspension of a day care home or an unaffiliated center.

The administering agency is prohibited from offering an appeal prior to the commencement of the suspension and payments will remain suspended until the fair hearing is concluded. If the hearing official overturns the suspension, the program operator may claim reimbursement for eligible meals served during the suspension. Current § 226.6(c)(5)(i)(C), which addresses termination of the agreement by the program operator and placement on the National Disqualified List, would move to proposed § 226.25(f)(1)(i)(B) and (f)(1)(ii)(B). If a program operator voluntarily terminates its agreement after receiving the notice of proposed termination, the program operator will still be terminated for cause and disqualified.

#### Proposed Suspension for Fraud or Fraudulent Claim

Submission of a false claim for reimbursement in facilities is a serious management problem that must be addressed through the serious deficiency process. However, an institution is subject to suspension for the submission of a false claim for reimbursement. Current § 226.6(c)(5)(ii), authorizes State agencies to suspend participation, at their discretion, if the State agency determines that a claim for reimbursement is fraudulent or cannot be verified with required documentation. Under proposed § 226.25(f)(2) of this rulemaking, FNS would require State agencies to suspend participation of institutions in all cases of false or fraudulent claims. Suspension stops the flow of payments to those institutions and provides protection against misuse of program funds.

Suspension for false or fraudulent claims is not immediate. At the time suspension is proposed, the State agency must initiate action to terminate the agreement to disqualify the institution, responsible principals, and responsible individuals. Suspension for false or fraudulent claims becomes effective if the institution does not appeal the proposed termination and disqualification or, if a suspension review is requested, the hearing official upholds the State agency's proposed action. If a suspension for submission of a false or fraudulent claim is overturned, the serious deficiency process to address the institution's serious management problems would still continue.

All of the requirements for suspending an institution for submitting

a fraud or fraudulent claim that are found in current § 226.6(c)(5)(ii) would move to proposed § 226.25(f)(2). Suspension of payments would move from current §§ 226.6(c)(5)(i)(D), 226.6(c)(5)(ii)(E), and 226.16(l)(4)(iv) to proposed § 226.25(h)(2). When the State agency proposes to suspend an institution's participation, including program payments for the submission of a false or fraudulent claim, the State agency must issue a combined notice of serious management problems and proposed suspension, which would include a description of the serious management problem and the State agency's fair hearing procedures for suspension and termination. The institution has the right to request a suspension review as well as a fair hearing of the proposed termination and disqualification action.

The suspension is implemented if the institution does not appeal the action or, if an appeal is filed, the hearing official upholds the action proposed by the State agency. If the suspension review official overturns the proposed suspension, the institution may claim reimbursement for eligible meals served during the proposed suspension. A State agency must not reimburse an institution for that portion of a claim that the State agency knows to be invalid. Voluntary termination of the institution's agreement with the State agency after having received the notice would still result in termination for cause and placement on the National Disqualified List.

Suspension of participation and suspension of payments add strong integrity protections against the submission of false and fraudulent claims in CACFP. FNS is concerned that there are similar circumstances in SFSP where continuing program operations is inappropriate, yet there are no corresponding requirements authorizing the State agency to suspend participation and payments. FNS recognizes that additional public input is needed to consider the use of suspension to protect against the submission of false or fraudulent claims in SFSP. Public comments on the following proposed options will be critical as FNS develops the final rule:

1. Option 1 of this proposed rule would require the State agency to apply the serious deficiency process when it determines that a sponsor in SFSP has submitted a false or fraudulent claim. The serious deficiency process would provide the sponsor the opportunity for corrective action and a fair hearing, with no suspension of participation. The sponsor would be eligible to continue to participate in SFSP and receive



payments for all valid claims that are submitted to the State agency for reimbursement.

2. Option 2 would require the State agency to propose suspension based on a sponsor's submission of a false or fraudulent claim, at the same time that the serious deficiency process is implemented. The suspension would remain in effect until the false or fraudulent claim is corrected or a fair hearing of the suspension completed. Although there would be no formal termination of the agreement, the sponsor would not be eligible to participate in SFSP during the period of suspension. All payments of claims for reimbursement would be suspended. If a fair hearing overturns the suspension, the sponsor would be eligible for retroactive reimbursement.

Accordingly, this rulemaking proposes to make corresponding changes to 7 CFR 226.2 and 226.25 to align the proposed amendments to the serious deficiency process. This proposed rule would move State agency actions to suspend participation if health or licensing officials cite an institution for serious health or safety violations from 7 CFR 226.6(c)(5)(i) through 226.25(f)(1). Requirements for the State agency to exercise its authority to suspend participation if it determines that an institution knowingly submitted a claim for reimbursement that is fraudulent or that cannot be verified with required documentation would move from 7 CFR 226.6(c)(5)(ii) to 226.25(f)(2). Fair hearing procedures at 7 CFR 226.6(k) and (l) would move to § 226.25(g). Sponsoring organization actions to suspend participation of day care homes that are currently found at 7 CFR 226.16(l)(4) would move to § 226.25(f). Requirements for the suspension of payments would move from 7 CFR 226.6(c)(5)(i)(D), 226.6(c)(5)(ii)(E), and 226.16(l)(4)(iv) to 226.25(h)(2).

#### *D. Disqualification and the National Disqualified List*

##### 1. Termination for Cause and Disqualification

The serious deficiency process gives program operators the opportunity for corrective action and due process. The administering agency can accept corrective action at any point up until the program agreement is terminated. If the administering agency determines that the program operator, whose ability to manage the program has already been called into question, fails to take successful corrective action, the program agreement must be terminated for cause. Under this proposed rule, the

administering agency would declare the program operator to be seriously deficient at the point of termination, which would be followed by disqualification.

##### Termination for Cause

The *Child Nutrition Program Integrity Final Rule* amended CACFP and SFSP regulations to allow a program operator to terminate an agreement for convenience for considerations unrelated to its program performance, at current §§ 225.6(i) and 226.6(b)(4)(ii). In the serious deficiency process, due to a program operator's inability to properly perform its responsibilities under its program agreement, termination must always be for cause, not convenience. Current § 226.16(l) also addresses a sponsoring organization's actions to terminate a day care home's agreement for cause. There are no regulations describing the termination for cause of a CACFP institution or unaffiliated center or an SFSP sponsor's agreement related to the performance of program requirements.

To strengthen management practices and eliminate gaps that put program integrity at risk, FNS proposes to amend current §§ 225.2 and 226.2 to include definitions of "Termination for cause" to describe the administering agency's action to end an agreement with a sponsor, an institution, an unaffiliated center, or a day care home for reasons related to proper performance of program responsibilities. This proposed rule would also require action by the State agency to:

- Terminate an agreement whenever a sponsor's participation in SFSP or an institution's participation in CACFP ends at proposed §§ 225.6(i) and 226.6(b)(4)(iii), respectively;
- Terminate an agreement for cause, as described under the serious deficiency process proposed §§ 225.18(d)(1) and 226.25(d)(1); and
- Terminate an agreement for cause if a program operator, responsible principal, or responsible individual is on the National Disqualified List, at proposed §§ 225.18(e)(1) and 226.25(e)(1).

##### Disqualification

The National Disqualified List was established to prevent a disqualified institution or day care home from being approved to participate in CACFP or any other Child Nutrition Program. As described in the next section of this preamble, FNS proposes to amend 7 CFR 210.9(d), 215.7(g), 220.7(i), 225.6(b)(13), and 226.6(b)(1)(xiii), to establish a reciprocal disqualification process that would prohibit State

agencies from approving an application for any program operator that is terminated for cause and placed on a National Disqualified List.

In CACFP, if a new institution's application does not meet program requirements under 7 CFR 226.6(b), 226.15(b), or 226.16(b), the State agency must deny the application and disqualify the applicant institution, the person who signed the application, and any other responsible principals or responsible individuals, as described in proposed § 226.6(c). The State agency must ensure that participating institutions annually certify that neither the institution nor its principals are on the National Disqualified List. The State agency must also ensure that participating sponsoring organizations annually certify that no sponsored facility or facility principal is on the National Disqualified List.

When a new application is denied, current § 226.6(c)(1) requires the State agency to follow the procedures for implementing the serious deficiency process. However, FNS recognizes that the intent of the serious deficiency process is to address program performance under a legally binding agreement. It may be more appropriate to address the denial of a program application through a remedial application process, instead of the serious deficiency process. This rulemaking would amend 7 CFR 226.6(c)(1) to propose a separate set of procedures that would provide applicants the opportunity to correct the application and request due process if the application is denied. Similarly, the serious deficiency process would not apply to a denial of a sponsor's application for SFSP, as described in 7 CFR 225.11(c).

##### 2. Reciprocal Disqualification in Child Nutrition Programs

Section 12(r) of the NLSA, 42 U.S.C. 1760(r), specifies 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. FNS proposes 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 and the applicant is on the National Disqualified List for CACFP or SFSP. This process is called "reciprocal disqualification."

The establishment of a reciprocal disqualification process supports

integrity when it is determined that a program operator currently participating in a Child Nutrition Program is terminated for cause from another Child Nutrition Program and placed on the National Disqualified List. Proposed § 226.6(b)(1)(xiii) would prohibit State agencies from approving an application for participation in any Child Nutrition Program for any program operator that is terminated for cause and placed on the National Disqualified List. Current § 226.6(c)(1)(iii)(C)(3) and proposed §§ 226.6(c)(6)(iii) and 226.25(g)(1)(i)(A) provide the right to a fair hearing to program operators whose applications are denied. The right to a fair hearing of an application denial for program operators based on the National Disqualified List is solely granted to contest the accuracy of the information on the National Disqualified List or the match to the National Disqualified List. The basis for denial, termination for cause, and placement on the National Disqualified List, is not subject to an additional hearing. The right to a fair hearing already would have been provided prior to termination and disqualification.

Proposed § 226.25(e)(1) would apply reciprocal disqualification for termination and placement on a National Disqualified List for program operators with an existing program agreement. This rulemaking would also apply termination procedures, under 7 CFR 210.25, 215.16, 220.19, 225.11, 226.6, and 226.16, when it is determined that a program operator currently participating in a Child Nutrition Program is terminated for cause from another Child Nutrition Program and placed on a National Disqualified List. The State agency would have to make an effort to ensure that eligible children and adult participants continue to have access to important nutrition benefits. For example, if a CACFP sponsoring organization is terminated and disqualified, the State agency should have a contingency plan for the transfer of homes or unaffiliated centers. A contingency plan, as defined in proposed §§ 225.2 and 226.2, and further described in proposed §§ 225.18(d)(2) and 226.25(d)(2), would help ensure that meal services continue to be available, without interruption.

This proposed rule would require the State agency to follow the same procedures to address serious management problems through corrective action and due process for all types of program operators. However, at the point when a proposed termination action is upheld and the program operator is declared seriously deficient,

as described in proposed § 226.25(a)(6)(iii)(B) and (d)(1), FNS has determined that there are circumstances that may warrant an alternative to disqualification for institutions or sponsors that are also school food authorities. FNS recognizes that school food authorities are responsible to safeguard school meal benefits to children. Additional public input is needed to consider a different procedure when a school food authority that is also an institution or sponsor operating CACFP or SFSP, respectively, is declared seriously deficient. Public comments on the following options will be critical as FNS develops the final rule:

1. Option 1 would require the State agency to terminate, disqualify, and place on the National Disqualified List any school food authority that is declared seriously deficient, just like any other type of institution or sponsor that is operating CACFP and SFSP. If a school food authority is determined to be seriously deficient, the school food authority's agreement to operate CACFP or SFSP would be terminated, and it would be disqualified and placed on the National Disqualified List, as described under proposed §§ 225.18(e) and 226.25(e). Placement on the National Disqualified List would prohibit the school food authority from operating the National School Lunch Program, School Breakfast Program, or any other Child Nutrition Program. The responsible principals and responsible individuals would also be disqualified from program participation and placed on the National Disqualified List.

2. Option 2 would require the State agency to terminate the school food authority's agreement to operate CACFP or SFSP. In this case, the responsible principals and responsible individuals would be disqualified from program participation, placed on the National Disqualified List, and ineligible to participate in any Child Nutrition Program. However, the State agency would have discretion to disqualify and place the school food authority, itself, on the National Disqualified List. If the State agency determines that the school food authority should not be subject to disqualification and placement on the National Disqualified List, there would be no impact on the school food authority's ability to operate other Child Nutrition Programs, including the National School Lunch and School Breakfast Programs.

This rulemaking would not affect the eligibility of a school food authority that only operates the National School Lunch, School Breakfast, or Special Milk Programs to continue to participate

in those programs. FNS does not anticipate that it will impact most school food authorities that operate CACFP or SFSP. With their experience managing the school nutrition programs, school food authorities are well-positioned to successfully operate CACFP and SFSP.

There may also be circumstances when a school food authority may be a meal vendor for a program operator that has been placed on the National Disqualified List. If the school food authority is not otherwise connected to the management of CACFP or SFSP, the school food authority would continue to be eligible to participate in the Child Nutrition Programs, because it would not be responsible for program operations. School food authorities, sponsors, and institutions are only responsible for the schools, sites, and facilities identified in their State agency agreements.

Accordingly, this proposed rule would amend 7 CFR 225.2 and 226.2 to include definitions of termination for cause and contingency plan. Additional amendments to 7 CFR 210.9(d), 215.7(g), 220.7(i), 225.6(b)(13), 225.18(d) and (e), 226.6(b)(1)(xiii) and (b)(2)(iii)(D), and 226.25(d) and (e) would prohibit State agencies from approving an application for participation in any Child Nutrition Program for a program operator that is terminated for cause and that is listed on a National Disqualified List. This rulemaking would also amend 7 CFR 225.11(c) and 226.6(c) to ensure that the appropriate procedures are followed for a denial of a sponsor's or institution's application.

### 3. Legal Requirements for Records Maintained on Disqualified Individuals

The National Disqualified List is a Federal computer matching program that uses a Computer Matching and Privacy Protection Act system of records of information on institutions and individuals who are disqualified from participation in CACFP. This is a mandatory collection under section 243(c) of Public Law 106-224, the Agricultural Risk Protection Act of 2000, which amended section 17 of the Richard B. Russell National School Lunch Act, at 42 U.S.C. 1766(d)(5)(E)(i) and (ii), and under 7 CFR 226.6(c)(7)(i). This proposed rule would expand the National Disqualified List to include the records of sponsors, sites, responsible principals, and responsible individuals who have been disqualified from SFSP, in compliance with section 13 of the NSLA, at 42 U.S.C. 1761(q)(3), and the Computer Matching Act, at 5 U.S.C. 552a. The Computer Matching Act applies when a Federal agency conducts

a computer match of two or more personally identifiable information records for establishing or verifying eligibility under a Federal benefit program. The Computer Matching Act also applies when a non-Federal agency compares information with a Federal system of records to determine eligibility for a Federal benefit program. A computer match takes information provided by a Federal source and compares it to a State record, using a computer to perform the comparison.

The National Disqualified List supports program integrity by preventing institutions whose program agreements were terminated for cause and disqualified in one State from being approved for participation in another State. It prevents disqualified responsible principals from continuing to be involved in program administration by forming a new corporate entity and entering the program under a different organizational name. It also prevents day care home providers and responsible individuals who have been terminated and disqualified by one sponsoring organization from re-entering the program under the auspices of a different sponsoring organization. Once disqualified, program participation is prohibited for 7 years from the effective date of the disqualification and until any debt is paid.

The records of institutions, responsible principals, and responsible individuals who have been disqualified from participation in CACFP are part of the National Disqualified List. As FNS described in the notice, *Privacy Act of 1974; System of Records Revision*, 86 FR 48975, September 1, 2021, many of the steps of the serious deficiency process align with requirements of the Computer Matching Act. For example, the State agency initiating a National Disqualified List search must independently verify records to determine accuracy before taking adverse action against a program applicant or participant. FNS uploads every certified notice of serious deficiency into the system, which the State agency may use to verify that the match is correct. After records are verified, the State agency must notify the disqualified program applicant or participant of the match findings. However, current § 226.6(c)(6) describing the National Disqualified List does not address procedures or protections for data disclosure and privacy specified for records maintained on any person in a computer matching program under the Computer Matching Act.

This proposed rule would close the gap by codifying the responsibilities of administering agencies in implementing systems of records, as described in the Computer Matching Act. Under proposed §§ 225.18(e)(3) and 226.25(e)(3), each State agency would enter into a written matching agreement with FNS to address procedures and protections for disclosure and privacy of personally identifiable information records on the National Disqualified List. Additional amendments would advise State agencies on the use of matching agreements, independent verification of matching information, use of disqualification data, and safeguards to protect individuals who may be incorrectly placed on the National Disqualified List through human error or technical lapses in the system. Before a CACFP or an SFSP application is denied, the State agency would also have to notify any individual whom the application identifies as being placed on the National Disqualified List. The State agency must provide an opportunity for the individual to ensure that the record is accurate.

Current CACFP regulations at 7 CFR 226.6(b)(1)(xii) and (b)(2)(iii)(C) require State agencies and sponsoring organizations to verify that applicants are not on the National Disqualified List prior to approval or annual certification of participation. Similarly, before hiring, CACFP sponsoring organizations must check the National Disqualified List to verify that any new employee whose position will be supported by program funds or who will be working in CACFP is not on the National Disqualified List. Proposed § 226.25(e)(3)(i)(C) would require the State agency initiating a computer match to verify the disqualification before taking adverse action against a program applicant, participant, or employee. The State agency could contact the originating administering agency or check the certified notices that are uploaded to the system to verify the disqualification.

The serious deficiency process requires three types of certified notices that are uploaded to the system, which administering agencies may use to independently verify the accuracy of a computer match. This rulemaking would also amend the definition of “notice” under 7 CFR 226.2 and address the content and delivery requirements for all of the notifications that are transmitted as part of the serious deficiency process at proposed § 226.25(a)(5).

This proposed rule would also expand the National Disqualified List to include the records of sponsors, sites,

responsible principals, and responsible individuals who have been disqualified from SFSP, as required under section 13 of the NSLA, at 42 U.S.C. 1761(q)(3). FNS proposes to amend SFSP regulations to address termination for cause at proposed § 225.18(d)(1); disqualification and placement on the National Disqualified List at proposed § 225.18(e)(2); and the State agency’s responsibilities under the Computer Matching Act at proposed § 225.18(e)(3).

Accordingly, this proposed rule would amend 7 CFR 225.18(e)(3) and 226.25(e)(3) to address compliance with the Computer Matching Act’s protections for data disclosure and privacy specified for records maintained on any person on the National Disqualified List. This rulemaking would also amend the definition of “notice” under 7 CFR 225.2 and 226.2 and further amend 225.18(a)(5) and (e)(3)(v), and 226.25(a)(5) and (e)(3)(v) to address the content and delivery requirements for serious deficiency process notifications and independent verification of a computer match.

#### *E. Multi-State Sponsoring Organizations (MSSO)*

A sponsoring organization is a type of public or private nonprofit institution that is entirely responsible for the administration of CACFP in any day care home, unaffiliated public or private nonprofit center, or affiliated for-profit center. Day care homes are required to participate in CACFP through a sponsoring organization. Although centers may enter into an agreement directly with the State agency, many centers find it is easier to participate in CACFP under an existing sponsoring organization. As a growing number of sponsoring organizations expand to serve multiple types of facilities in multiple States, State agencies are faced with unique challenges, particularly when serious management problems arise. Without regulated practices, assignment of State agency responsibilities and protocol of communication, State agencies dealing with multi-state sponsoring organizations (MSSOs) could duplicate each other’s efforts and could be unaware of potential serious management problems occurring in another State. In SFSP, FNS understands there are an increasing number of sponsors operating summer meal programs at sites in more than one State.

FNS is taking this opportunity to propose regulations to strengthen State agency administration when a sponsoring organization operates the program in more than one State. This

proposed rule addresses provisions to facilitate the State agency's review of administrative budgets and allocation of shared costs, performance of monitoring and audit-related activities, and oversight when procurement standards vary from State to State. FNS recognizes that improved information sharing, collaboration, and coordination among administering agencies are also essential to ensure that participation of MSSOs is administered properly, with less duplication and burden.

At 7 CFR 226.2, FNS proposes to define an MSSO as a sponsoring organization that operates CACFP in more than one State. This proposed rule would define an MSSO as a sponsor that operates SFSP in more than one State, under 7 CFR 225.2. An MSSO enters into a written agreement with the administering agency in each State where it is approved to provide CACFP or SFSP meal services. An independently owned or franchised organization operating multiple centers, day care homes, or sites in a single State would not be an MSSO. However, a franchise operating multiple centers, day care homes, or sites in more than one State would be an MSSO. A for-profit organization is an MSSO when the parent corporation operates multiple affiliated centers or affiliated sites in more than one State.

The State agency must determine if program operations will be provided in more than one State, as part of the application process. Proposed §§ 225.6(c)(5), 226.6(b)(1)(xix), and 226.6(b)(2)(iii)(L) would require the State agency to ask all applicants if they are approved or intend to submit an application to participate in any other State. The application of a potential MSSO would have to provide: additional information on the number of affiliated and unaffiliated facilities or sites it operates; its use of program funds for administrative expenses; and its nonprofit or for-profit status. The application would also have to include a comprehensive budget that provides the sum of all costs to be incurred, identifies costs that attribute directly to operations within each State, and sets out a cost allocation plan for costs benefiting more than one State.

For program purposes, a cognizant agency is any State agency or FNS Regional office that is responsible for oversight of CACFP or SFSP in the State where the MSSO's headquarters is located. The location of the MSSO's headquarters is the determining factor in assigning the role of the cognizant agency. This rulemaking proposes to add definitions of Cognizant State agency and Cognizant Regional office,

under 7 CFR 225.2 and 226.2, to recognize the roles that these administering agencies have when an MSSO participates in CACFP or SFSP. These terms are currently not defined in regulation. By assigning responsibilities to the Cognizant State agency and Cognizant Regional office, this will eliminate a duplication of effort and increase program integrity by increasing awareness of the MSSO's performance in other States. FNS seeks input on how MSSO's headquarters are identified.

Over the years, FNS has issued CACFP guidance to clarify responsibilities—particularly with regard to participation of franchises and for-profit organizations, review of administrative budgets, allocation of shared costs, availability of records, performance of monitoring and audit-related activities, and procurement actions—for agencies that assume cognizance. This set of guidance includes FNS Instruction 788–5, *Approval of Administrative Budgets for Multi-State Sponsoring Organizations of Family Day Care Homes—Child Care Food Program*, October 25, 1982; FNS Instruction 788–16, *Administrative Procedures for Multi-State Sponsoring Organization—Child Care Food Program*, October 19, 1983; FNS Instruction 788–6, Revision 2, *Availability of Institutions' Records to Administering Agencies*, November 1, 1991; FNS Instruction 796–2, Revision 4, *Financial Management—Child and Adult Care Food Program*, December 11, 2013; and the memorandum, *Applicability of FNS Instruction 788–16 to Multi-State Proprietary CACFP Sponsors*, June 25, 2003.

FNS proposes to amend CACFP regulations at 7 CFR 226.6(q) to address the responsibilities of the administering agency in all States where MSSOs operate and describe the unique role of the cognizant agency in the State where the MSSO is headquartered. This proposed rule would add similar amendments to SFSP regulations under 7 CFR 225.6(n).

This rulemaking would require all CACFP State agencies and SFSP State agencies to:

- *Determine if an applicant is an MSSO.* As part of the application process, the State agency must ask all applicants if their organization operates in more than one State.
- *Obtain administrative and financial information from each MSSO.* The following information must be obtained initially on the MSSO's application and annually certified or updated:
  - The number of affiliated facilities or sites it operates, by State;

- The number of unaffiliated facilities or sites it operates, by State;
- The names, addresses, and phone numbers of the organization's headquarters and the official who has administrative responsibility;

- The names, addresses, and phone numbers of the financial records center and the official who has financial responsibility; and

- The organization's decision whether or not to use program funds for administrative expenses.

- *Approve the administrative budgets of any MSSOs operating within their respective States.* The State agency is responsible for approving budget line items that are directly attributable to operations within the State. The State agency must notify the cognizant State agency of any CACFP administrative costs that exceed the 15 percent limit, as described in current § 226.6(f)(1)(iv). In SFSP, the State agency must notify the cognizant State agency if it has determined that the ratio of administrative to operating costs is high or that the net cash resources of an MSSO's nonprofit food service exceeds the limits that are described in 7 CFR 225.7(m).

- *Enter into a permanent written agreement with each MSSO operating within the State.* Each MSSO must enter into an agreement with the State agency to assume final administrative and financial responsibility for program management in each State in which it operates.

- *Track State-specific costs.* The State agency is responsible for approving State-specific costs, which include the State agency's portion of budget line item costs that are shared among other administering agencies, as well as costs that attribute directly to program operations within the State.

- *Conduct oversight of MSSO operations within the State.* State agencies must comply with SFSP and CACFP monitoring and program assistance requirements under proposed §§ 225.6(n)(2) and 226.6(q), respectively, to conduct reviews, training, and other oversight activities of MSSOs operating within their respective States. The review cycle would be based on the number of sites or facilities operating within the State. To reduce administrative burden, the State agency may use information from the cognizant State agency's monitoring activities to assess compliance in areas where the scope of review overlaps, during the same review cycle. In those circumstances, the State agency may choose to only review those aspects of CACFP or SFSP that are outside the scope of the cognizant agency's review,

such as implementation of additional State agency requirements or financial records to support State-specific administrative costs. Summaries of reviews conducted within each State must be provided to the cognizant State agency. The State agency may also choose to conduct a full review at the MSSO headquarters and financial records center, by requesting the necessary records from the cognizant State agency.

- *Conduct audit resolution activities.*

State agencies are responsible for reviewing audit reports, addressing audit findings, and implementing corrective actions to resolve audits of any MSSOs operating within their respective States. MSSOs must make audit reports available to the State agencies in all of the States in which they have program operations.

- *Make available copies of notices of termination and disqualification.* The State agency conducting the oversight activities must notify all other administering agencies that have agreements with the MSSO of termination and disqualification actions. If a State agency holds an agreement with an MSSO that is disqualified by another administering agency and placed on the National Disqualified List, the State agency must terminate the MSSO's agreement, effective no later than 30 calendar days of the date of the MSSO's disqualification. This requirement is 45 days in CACFP regulations at current § 226.6(c)(2)(i). In SFSP, this proposed rule would require the State agency to terminate the MSSO's agreement, effective no later than 15 calendar days of the date of the MSSO's disqualification.

FNS also proposes requirements for the cognizant State agency administering CACFP or SFSP. This rulemaking would require the cognizant State agency to:

- *Determine if there will be shared administrative costs among the States in which the MSSO operates and how the costs will be allocated.* The cognizant agency has the authority to approve cost levels for cost items that must be allocated. The cognizant State agency must approve the allocation method that the MSSO uses for shared costs. The method must allocate the cost based on the benefits received, not the source of funds available to pay for the cost. If the MSSO operates CACFP centers, the cognizant agency must also ensure that administrative costs are capped at 15 percent on an organization-wide basis. In SFSP, the cognizant agency must ensure that the net cash resources of an MSSO's nonprofit food service do not

exceed the limits that are described in 7 CFR 225.7(m).

- *Coordinate monitoring.* The cognizant State agency's monitoring activities must include a full review at the MSSO headquarters and financial records center. The cognizant State agency must coordinate the timing of reviews and make copies of monitoring reports and findings available to all other administering agencies that have agreements with the MSSO, as described in proposed §§ 225.6(n)(2)(iii) and § 226.6(q)(2)(iii).

- *Ensure that organization-wide audit requirements are met.* Each MSSO must comply with audit requirements, as described under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415. Since their operations are often large and complex, MSSOs should have annual audits. If an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements.

- *Oversee audit funding and costs.* Audit funding is a shared responsibility. The share of organization-wide audit costs may be based on a percentage of each State's expenditure of CACFP and SFSP funds and the MSSO's expenditure of Federal and non-Federal funds during the audited fiscal year. The cognizant State agency should review audit costs as part of the overall budget review and make audit reports available to the other administering agencies that have agreements with the MSSO.

- *Ensure compliance with procurement requirements.* Procurement actions involving MSSOs must follow the requirements under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415. If the procurement action benefits all States in which the MSSO operates, the procurement standards of the State that are the most restrictive apply. If the procurement action only benefits a single State's program, the procurement standards of that State agency apply.

Accordingly, this rule proposes to amend 7 CFR 226.2, 226.6(b)(1) and (2), and 226.6(q) to address State administrative responsibilities when MSSOs participate in CACFP. Amendments to 7 CFR 225.2, 225.6(c)(5), and 225.6(n) would make similar changes to address State administrative responsibilities when MSSOs participate in SFSP.

#### *F. Summary of Regulatory Provision Proposals*

This rulemaking reflects FNS' commitment to work with State administrators, program operators, and other stakeholders to develop strategies

to ensure that Child Nutrition Program requirements are effective, practical, and fair. FNS has proposed important modifications to the serious deficiency process that, when codified in the regulations, are designed to strengthen administrative oversight, improve operational performance, and protect Child Nutrition Programs from mismanagement, abuse, and fraud. The serious deficiency process described in this proposed rule includes procedures for corrective action, termination, disqualification, and due process that emphasize fairness and consistency for all types of program operators in CACFP and SFSP. This proposed rule addresses statutory requirements and policy improvements that would:

- Extend the serious deficiency process to unaffiliated centers in CACFP.
- Establish a serious deficiency process in SFSP.
- Make improvements to the serious deficiency process by:
  - Defining terms that would encourage a clear understanding and improve implementation of the serious deficiency process;
  - Including measures for identifying a serious management problem and determining the effectiveness of corrective action;
  - Offering a path to full correction of a serious management problem and the removal of the determination of serious deficiency;
  - Establishing timelines with an emphasis on correcting serious management problems quickly; and
  - Consolidating all regulatory requirements for oversight and implementation of the serious deficiency process, including due process, termination, and disqualification, in a single subchapter, at 7 CFR 225.18 and 226.25.
- Direct each SFSP State agency to establish a list of sponsors, responsible principals, and responsible individuals with serious management problems.
- Require action by the State agency to terminate a CACFP or SFSP agreement for cause through the serious deficiency process.
  - Expand the National Disqualified List to include disqualified SFSP sponsors, responsible principals, and responsible individuals on the National Disqualified List.
  - Direct the State agency to exercise its authority to suspend CACFP participation when a false or fraudulent claim is alleged.
  - Require compliance with the Computer Matching Act's protections for data disclosure and privacy specified

for records maintained on any person on the National Disqualified List.

- Propose requirements to strengthen State agency administration when a program operator participates in CACFP or SFSP in more than one State.

Public input and assessment, with an opportunity to examine CACFP and SFSP operations and consider improvements related to this proposed rule, are essential elements of the rulemaking process. FNS invites the public to submit comments to help FNS gain a better understanding of both the possible benefits and any negative impacts associated with the proposed regulatory changes. FNS requests specific input on a proposal to allow an alternative to disqualification for program operators that are school food authorities. Specific public input is also requested on the requirement that State agencies exercise their authority to suspend CACFP participation when a false or fraudulent claim is alleged and to extend this authority to State agencies administering SFSP. Public comments on these amendments will be critical as FNS develops the final rule.

### III. Procedural Matters

#### A. Executive Orders 12866, 13563 and 14094

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order (E.O.) 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rulemaking was determined to be not significant under section 3(f) of E.O. 12866, as amended by E.O. 14094, and therefore no Regulatory Impact Analysis is required.

#### B. 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 proposed 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 and local organizations operating the Child and Adult Care Food Program and Summer Food Service Program, any economic effect will not be significant.

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

#### D. 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, Special Milk, and School Breakfast Programs are listed under Nos. 10.555, 10.556, and 10.553, respectively. All are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Since these 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.

#### E. 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 proposed rule does not have federalism implications. This rulemaking does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

#### F. Executive Order 12988, Civil Justice Reform

This proposed 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.

#### G. Civil Rights Impact Analysis

FNS has reviewed the proposed rule, in accordance with Departmental Regulation 4300–004, “Civil Rights Impact Analysis,” to identify and address any major civil rights impacts the proposed rule might have on participants based on age, race, color, national origin, sex, and disability. Due to the unavailability of data, FNS is unable to directly determine whether this proposed rule will have an adverse or disproportionate impact on protected classes among entities that administer and participate in Child Nutrition Programs.

The proposed serious deficiency rule includes strategies to ensure that the serious deficiency process is implemented fairly and evenly across states and among institutions. By codifying the criteria for identifying when a finding is a serious management problem, the process is more standardized. The new serious deficiency process also provides an opportunity for institutions to correct serious management problems, a

significant departure from the current process in which a serious deficiency is only temporarily deferred and never fully corrected. Importantly, the proposed rule aligns the “seriously deficient” designation with proposed termination rather than determining an institution is seriously deficient at the beginning of the process and then deferring that status unless or until there is a repeat finding. This step, in particular, responds to commenters’ concerns about a seriously deficient status and its effect on an institution’s reputation which could, in turn, encourage more participation in CN programs.

FNS will also develop materials for program operators in formats for individuals with limited English proficiency and for individuals with disabilities, that describe the serious deficiency process and program operators’ rights and responsibilities. States are also required to have contingency plans to ensure meals remain available in the event a sponsor is terminated.

FNS Civil Rights Division finds that the current mitigation and outreach strategies outlined in the regulations and this Civil Rights Impact Analysis (CRIA) provide ample consideration to applicants’ and participants’ abilities to participate in the CACFP and SFSP. The promulgation of this proposed rule will affect CACFP institutions and facilities and SFSP sponsors. FNS expects that the proposed changes, *e.g.*, defining key terms, outlining clear steps in the review process, and providing a path to full correction, will be an overall positive change for CACFP and SFSP program operators. Finally, FNS is looking forward to the opportunity to review public comments on the proposed rule.

#### H. Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Tribal representatives were informed about this rulemaking during a consultation on May 23, 2023, FNS anticipates that this rulemaking will have no significant cost and no major

increase in regulatory burden on Tribal organizations.

#### I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule is revising existing information collection requirements, which are subject to review and approval by OMB. This rulemaking proposes new reporting, recordkeeping, and public disclosure requirements for State agencies and sponsoring organizations that administer the Child and Adult Care Food Program (CACFP), the Summer Food Service Program (SFSP), and the National Disqualified List (NDL). The rule also proposes new regulatory citations for some of the existing requirements in these collections.

FNS is submitting for public comment the information collection burdens that will result from adoption of the new reporting, recordkeeping, and public disclosure requirements and the changes in regulatory citations for some of the existing requirements which are proposed in the rulemaking. The establishment of the proposed collection of information requirements are contingent upon OMB approval. Since this rulemaking impacts three separate information collections: OMB Control Number 0584–0280 7 CFR part 225, *Summer Food Service Program*; OMB Control Number 0584–0055 *Child and Adult Care Food Program (CACFP)*, and OMB Control Number 0584–0584 *Child and Adult Care Food Program (CACFP) National Disqualified List*. This rulemaking contains three separate PRA sections to capture the burden impact that this proposed rule is estimated to have on these existing collections.

Comments on the information collection in this proposed rule must be received by May 21, 2024.

Comments may be sent to: Program Integrity and Innovation Division, 1320 Braddock Place, Alexandria, VA 22314. Comments will also be accepted through the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and follow the online instructions for submitting comments electronically.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (2) 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; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) 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 document will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

*Title:* 7 CFR part 225, Summer Food Service Program.

*Form Number:* FNS–843 and FNS–844.

*OMB Control Number:* 0584–0280.

*Expiration Date:* 09/30/2025.

*Type of Request:* Revision.

*Abstract:* This revision adds new requirements and revises existing requirements in the currently approved information collection for OMB Control Number 0584–0280. Below is a summary of the changes in the proposed rule and the impact that it will have on the reporting, recordkeeping, and public disclosure requirements for the state/local/tribal government agencies, non-profit institutions, and camps.

State agencies have a responsibility for the monitoring and oversight of institutions in the Child and Adult Care Food Program (CACFP). To maintain program integrity and ensure compliance with program requirements, FNS established the serious deficiency process to address mismanagement, abuse, and fraud by institutions and facilities participating in the program. The serious deficiency process establishes a structured series of steps to identify serious deficiencies, take corrective action, and suspend, terminate, and disqualify institutions and responsible principals and responsible individuals that undermine the integrity of the program. State agencies also have a similar responsibility to monitor and provide oversight of the Summer Food Service Program (SFSP).

Currently, the SFSP does not have a defined process to address serious management problems threatening the integrity of the program. SFSP regulations specify that state agencies must consider specific criteria before approving sites for participation. Regulations also provide authority for State agencies to terminate sponsor

participation and establish procedures for sponsors to appeal adverse actions, but they do not provide authority for FNS or state agencies to disqualify an individual from participating in SFSP, or in any other Child Nutrition Program or being placed on the National Disqualified List. This proposed rule would extend the serious deficiency process to SFSP to address potential serious management problems threatening the integrity of the program.

This proposed rule would amend 7 CFR 225.6 and 225.18 to extend the serious deficiency process to SFSP. State agencies would be required to implement a serious deficiency process; provide appeal procedures to sponsors, annually and upon request; specify the types of adverse actions that cannot be appealed in SFSP; establish a list of sponsors, responsible principals, and responsible individuals declared seriously deficient; terminate agreements whenever a program operator's participation ends; and take action to terminate an agreement for cause, through the serious deficiency or placement on the National Disqualified List. This will strengthen management practices and eliminate gaps that put program integrity at risk.

#### Reporting

##### State/Local/Tribal Government Agencies

The changes proposed in this rule will add additional reporting requirements to the requirements currently approved under OMB Control Number 0584-0280 for State/Local/Tribal Government Agencies. It will also change the regulatory cite for one of the existing reporting requirements in the collection. All of these changes will be considered program changes since they are due to the proposed rule.

The proposed rule will add additional reporting requirements in 7 CFR 225.6 that apply the Serious Deficiency Process to MSSOs operating the Program.

USDA expects that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.6(c)(5) that a state agency must determine if a sponsoring organization operates in more than one state. USDA expects each state agency will collect and report information from 3 MSSOs and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 burden hours and 159 total responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n) that State

agencies must determine if a sponsoring organization is an MSSO, and assume the role of a Cognizant State agency (CSA) if the MSSOs center of operations is located within the State. USDA estimates that the 53 State agencies will be required to make 3 MSSO determinations each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(1)(i) that State agencies must enter into a permanent written agreement with the MSSO, as described in paragraph (b)(4). USDA expects that the 53 State agencies will be required to make 3 permanent agreements each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(1)(ii) that State agencies must approve the MSSOs administrative budget. USDA estimates that the 53 State agencies will be required to approve 3 administrative budgets each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 hours and 159 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(1)(iii) that State agencies must conduct monitoring of MSSO Program operations within the State, as described in paragraph (k)(4). USDA expects that the 53 State agencies will be required to monitor 3 MSSOs each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(1)(iii)(C) that State agencies provide summaries of the MSSO reviews that are conducted to the CSA. USDA estimates that the 53 State agencies will be required to submit 3 MSSO review summaries to the CSA annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(1)(iv) that State agencies must conduct audit

resolution activities. USDA estimates that the 53 State agencies will be required to conduct 3 audit resolution activities each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(1)(v) that State agencies must notify all other State agencies that have an agreement with an MSSO that their agreement has been terminated and have taken disqualification actions against that MSSO. USDA expects that the 53 State agencies will be required to make 3 notifications a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(2) that State agencies must determine if an MSSOs center of operations are located within the State and assume the role of the CSA. USDA estimates that the 53 State agencies will be required to make 3 MSSO determinations each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(2)(iii) that the CSA must conduct a full review at the MSSO headquarters and financial records center, coordinate the timing of the reviews, and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO. USDA expects that the 53 State agencies will be required to conduct a full review of 3 MSSO headquarters and financial records centers annually and that it takes approximately 20 hours to complete this requirement; which is estimated to add 3,180 annual burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(2)(iv) that, if an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements. USDA estimates that the 53 State agencies will be required to establish audit thresholds and requirements for for-profit MSSOs annually and that it takes approximately 1 hour to complete



this requirement; which is estimated to add 53 annual burden hours and responses to the collection.

The proposed rule will add additional requirements in 7 CFR 225.13 to establish fair hearing procedures for the extended serious deficiency process in SFSP.

USDA expects that 53 state agencies will be required to fulfill the new requirement at 7 CFR 225.13(a) that state agencies must establish a procedure to be followed by an applicant appealing for a fair hearing. USDA expects each state agency will need to establish a procedure for a fair hearing annually and that it will take approximately 1 hour to complete this requirement; which is estimated to add 53 burden hours and responses to this collection.

The proposed rule will add additional reporting requirements in 7 CFR 225.18 that extends the Serious Deficiency Process to SFSP.

USDA estimates that 53 state agencies will be required to fulfill the new requirement at 7 CFR 225.18(a)(2)(i) and (a)(3) that state agencies identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the sponsor or facility's ability to meet Program requirements. USDA estimates each state agency will be required to develop a set of standards to identify serious management problems, taking approximately 1 hour to complete this requirement; which is estimated to add 53 burden hours and responses to this collection.

USDA estimates that 53 state agencies will be required to fulfill the reporting requirement at 7 CFR 225.18(a)(2)(ii) and (a)(6)(i) that state agencies notify a sponsor's executive director, chairman of the board of directors, responsible principals, and responsible individuals that serious management problems have been identified, must be addressed, and must be corrected. USDA estimates each state agency will be required to notify 3 sponsors of the serious management problems and that it takes approximately 15 minutes (.25 hours) to complete this requirement; which is estimated to add 39.75 hours and 159 responses to the collection.

USDA expects that 53 state agencies will be required to fulfill the new requirement at 7 CFR 225.18(a)(2)(iii) and (c)(2)(ii) that state agencies must receive and approve a submitted corrective action plan within 15 days from the date the sponsor received the notice and monitor the full implementation of the corrective action

plan. USDA expects each state agency will be required to receive and approve 3 corrective action plans and that it takes approximately 15 minutes (.25 hours) to complete this requirement; which is estimated to add 39.75 burden hours and 159 total responses to the collection.

USDA expects that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(a)(2)(iv) and (a)(6)(ii) that state agencies notify a sponsor's executive director, chairman of the board of directors, responsible principals, and responsible individuals that the serious management problem(s) have been corrected and vacated or, if corrective action has not been taken or fully implemented, that the state agency proposes to terminate the sponsor's agreement and proposes to disqualify the sponsor, responsible principals, and responsible individuals. USDA expects each state agency will be required to notify 3 sponsors of their successful corrective action or proposes termination and disqualification and that it takes approximately 15 minutes (.25 hours) to complete this requirement; which is estimated to add 39.75 burden hours and 159 responses to the collection.

USDA estimates that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(a)(2)(v) and (f)(1)(iii)(E) that State agencies must submit written documentation to the hearing official prior to the beginning of the hearing, within 30 days after receiving notice of the action. USDA estimates that each state agency will have to provide documentation to 3 fair hearings annually and that it takes approximately 2 hours to complete this requirement; which is estimated to add 318 annual burden hours and 159 total responses to the collection.

USDA expects that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(a)(2)(v) and (f)(2) that hearing official must hold hearing, in addition to a review of written information upon written request for a fair hearing by the sponsor, responsible principals, or responsible individuals, to determine whether the State agency or sponsor followed Program requirements in taking action under appeal. USDA expects that each state agency will be required to provide 3 fair hearings annually and that it will take approximately 4 hours to complete this requirement; which is estimated to add 636 burden hours and 159 total responses to the collection.

USDA estimates that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(a)(2)(vi) and (a)(6)(iii) that state agencies notify

a sponsor's executive director and chairman of the board of directors that serious management problems have been vacated and advise the institution that procedures and policies must be implemented to fully correct the serious management problem if the sponsor's appeal is upheld. If the sponsor's appeal is denied, the sponsor must be notified that the program agreement is terminated and declared seriously deficient. USDA estimates each state agency will be required to notify 3 sponsors of the fair hearing determination and that it takes approximately 15 minutes (.25 hours) to complete this requirement; which is estimated to add 39.75 hours and 159 responses to the collection.

USDA estimates that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(c)(3) that state agencies must conduct and prioritize follow-up reviews and more frequent full reviews of sponsors with serious management problems, including one full review, at least once every year. USDA estimates each state agency will be required to review 3 sponsors and that it takes approximately 20 hours to complete this requirement; which is estimated to add 3,180 hours and 159 responses to the collection.

USDA expects that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(d)(2) that state agencies are required to develop a contingency plan to ensure that eligible participants continue to have access to meal service. USDA expects each state agency will be required to develop 3 contingency plans and that it takes approximately 2 hours to complete this requirement; which is estimated to add 318 burden hours and 159 responses to the collection.

USDA estimates that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(e)(2)(iii) that, if all serious management problems have been corrected and all debts have been repaid, state agencies may elect to remove a sponsor, responsible principals, and responsible individuals from the National Disqualified List, and must submit all requests for early removals to the appropriate Food and Nutrition Service Regional Office (FNSRO). USDA estimates each state agency will remove 3 sponsors from the National Disqualified List and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.18(e)(3)(ii)

that State agencies enter into written agreements with FNS in order to participate in a matching program involving a FNS Federal system of records. USDA estimates that 53 State agencies will enter into a CMA written agreement annually and that it will take 1 hour to complete this requirement; which is estimated to add of 53 annual burden hours and responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.18(e)(3)(iii)(B) that State agencies may request FNS to waive the two-step independent verification and notice requirement of the CMA. USDA expects that the 53 State agencies will request a waiver annually and that it will take an hour to complete this requirement; which is estimated to add 53 annual burden hours and responses to the collection.

USDA expects that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(g)(2) that state agencies must send a necessary demand letter for the collection of unearned payments, including any assessment of interest and refer the claim to the appropriate State authority for pursuit of the debt payment. USDA estimates each state agency will send 3 demand letters and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 hours and 159 responses to the collection.

USDA estimates that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(h)(2)(i) that state agencies must terminate for cause the program agreement no later than 45 days after the date of the sponsor's disqualification by FNS. This requirement is listed in the currently approved collection at 7 CFR 225.18(b)(2), but the proposed rule is changing the regulatory citation to 7 CFR 225.18(h)(2)(i). USDA estimates that each state agency will still be required to terminate 5 sponsors' agreements and that it will still take approximately 1 hour to complete this requirement. With the change in citation, USDA still expects this requirement to have 265 burden hours and 265 responses so no additional hours or responses will be added to the collection.

USDA expects that 933.33 local government sponsors will be required to fulfill the requirement at 7 CFR 225.18(c)(1) that sponsors must describe and document the action taken to correct each serious management problem in a corrective action plan and submit it to the state agency. USDA expects 933.3 local government

sponsors will be required to submit a corrective action plan and that it takes approximately 15 minutes (.25 hours) to complete this requirement; which is estimated to add 233.33 hours and 933 responses to the collection.

#### Non-Profit Institutions and Camps (Businesses)

USDA expects that 133 sponsoring organizations will be required to fulfill the requirement at 7 CFR 225.6(c)(5) that sponsoring organizations that are approved to operate the Program in more than one State must provide information concerning the sites and the officials who have administrative and financial responsibility. USDA expects that 133 sponsoring organizations will operate in more than one state and will collect and report information to FNS annually and that it takes approximately one hour and 15 minutes (1.25 hours) to complete this requirement; which is estimated to add 166.25 burden hours and 133 responses to the collection.

USDA estimates that 477 non-profit institutions and camps will be required to fulfill the requirement at 7 CFR 225.18(c)(1) to describe and document the actions taken to correct each serious management problem in a corrective action plan and submit it to the state agency. USDA estimates each non-profit institutions will be required to submit a corrective action plan and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 119.25 burden hours and 477 responses to the collection.

#### Recordkeeping

##### State/Local/Tribal Government Agencies

USDA estimates that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(b) that a state agency maintain a state agency list that includes information on each sponsor that are determined to have a serious management problem and be updated as they move through the serious deficiency process. As a part of the recordkeeping requirement, state agencies will be required to maintain records on the FNS-843 Report of Disqualification from Participation: Institution and Responsible Principals/Individuals and the FNS-844 Report of Disqualification from Participation—Individually Disqualified Responsible Principal/Individual or Day Care Home Provider forms, which must be updated if a sponsor has been declared seriously deficient as a part of the seriously deficient process. USDA estimates each state agency will be required to maintain 145 records of sponsors with

serious management problems and that it takes approximately 5 minutes (0.08 hours) to complete this requirement; which is estimated to add 641.70 burden hours and 7,685 responses to the collection.

#### Public Disclosure

##### State Agencies

The proposed rule will add an additional public disclosure requirement at 7 CFR 225.6(n)(2)(iii) as a part of the new review process for Multi-State Sponsoring Organizations (MSSOs).

USDA estimates that 53 State agencies will fulfill the requirement at 7 CFR 225.6(n)(2)(iii) that the Cognizant State Agency (CSA) must conduct a full review at the MSSO headquarters and financial records center, must coordinate the timing of the reviews, and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO. USDA estimates that the 53 State agencies will each disclose the findings of 3 MSSO reviews to other State agencies annually and that it takes 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

As a result of the proposals outlined in this rulemaking, FNS estimates that the proposals resulting from this rule will have 1,463 respondents, 13,097 total annual responses, and 9,959 total burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow. Based on these estimates, FNS estimates that this proposed rule will increase the burden for OMB Control Number 0584-0280 by 12,673 responses and by 9,694 burden hours, to an estimated 404,468 responses and 472,392 burden hours for the entire collection.

#### Reporting

*Respondents (Affected Public):* Businesses; and State, Local, and Tribal Government. The respondent groups include non-profit institutions and camps, and State agencies.

*Estimated Number of Respondents:* 1,463.

*Estimated Number of Responses per Respondent:* 3.59.

*Estimated Total Annual Responses:* 5,253.

*Estimated Time per Response:* 1.77.

*Estimate Total Annual Burden on Respondents:* 9,277.

#### Recordkeeping

*Respondents (Affected Public):* State, Local, and Tribal Government. The

respondent groups include State agencies.  
*Estimated Number of Respondents:* 53.  
*Estimated Number of Responses per Respondent:* 145.  
*Estimated Total Annual Responses:* 7,685.

*Estimated Time per Response:* 0.08.  
*Estimate Total Annual Burden on Respondents:* 642.  
 Public Disclosure  
*Respondents (Affected Public):* State, Local, and Tribal Government.  
*Estimated Number of Respondents:* 53.

*Estimated Number of Responses per Respondent:* 3.  
*Estimated Total Annual Responses:* 159.  
*Estimated Time per Response:* 0.25.  
*Estimated Total Annual Burden on Respondents:* 40.

ESTIMATED ANNUAL BURDEN FOR SFSP  
 [Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
State/Local/Tribal Governments.	The SA must determine if a sponsoring organization operates in more than one State.	225.6(c)(5) .....	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/Tribal Governments.	SAs must determine if a sponsoring organization is an MSSO, as described in paragraphs (b)(1)(xv) and (b)(2)(iii)(L). SAs must assume the role of the CSA, if the MSSOs center of operations is located within the State. Each SA that approves an MSSO must follow the requirements described in paragraph (i).	225.6(n) .....	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/Tribal Governments.	SAs must enter into a permanent written agreement with the MSSO, as described in paragraph (b)(4).	225.6(n)(1)(i) .....	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/Tribal Governments.	SAs must approve the MSSOs administrative budget.	225.6(n)(1)(ii) .....	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/Tribal Governments.	SAs must conduct monitoring of MSSO Program operations within the State, as described in paragraph (k)(4). The SA should coordinate monitoring with the CSA to streamline reviews and minimize duplication of the review content. The SA may base the review cycle on the number of facilities operating within the State.	225.6(n)(1)(iii) .....	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/Tribal Governments.	SAs must provide summaries of the MSSO reviews that are conducted to the CSA. If the SA chooses to conduct a full review, the SA should request the necessary records from the CSA.	225.6(n)(1)(iii)(C) ....	53	3	159	0.25	39.75	0	39.75	39.75

ESTIMATED ANNUAL BURDEN FOR SFSP—Continued  
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
State/Local/Tribal Governments.	SAs must conduct audit resolution activities. The SA must review audit reports, address audit findings, and implement corrective actions, as required under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415.	225.6(n)(1)(iv) .....	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/Tribal Governments.	SAs notify all other State agencies that have agreements with the MSSO of termination and disqualification actions, as described in paragraph (c)(2)(i).	225.6(n)(1)(v) .....	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/Tribal Governments.	If it determines that an MSSOs center of operations is located within the State, the SA must assume the role of the CSA.	225.6(n)(2) .....	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/Tribal Governments.	The CSA must conduct a full review at the MSSO headquarters and financial records center. The CSA must coordinate the timing of the reviews and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO.	225.6(n)(2)(iii) .....	53	3	159	20	3,180	0	3,180	3,180
State/Local/Tribal Governments.	If an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements.	225.6(n)(2)(iv) .....	53	1	53	1	53	0	53	53
State/Local/Tribal Governments.	SAs must establish a procedure to be followed by an applicant appealing for a fair hearing.	225.13(a) .....	53	1	53	1	53	0	53	53
State/Local/Tribal Governments.	SAs must identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the sponsor or facility's ability to meet Program requirements.	225.18(a)(2)(i) and 225.18(a)(3).	53	1	53	1	53	0	53	53

ESTIMATED ANNUAL BURDEN FOR SFSP—Continued  
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
State/Local/ Tribal Govern- ments.	SAs must notify a sponsor's executive director and chairman of the board of directors, and RPIs, that serious management problems have been identified, must be addressed, and corrected. The notice must identify all aspects of the serious management problem; reference specific regulatory citations, instructions, or policies; name all of the RPIs; describe the action needed to correct the serious management problem; and set a deadline for completing the corrective action. At the same time, the SA must add the sponsor and RPIs to the SA list and provide a copy of the notice to the appropriate FNSRO.	225.18(a)(2)(ii) and 225.18(a)(6)(i).	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Govern- ments.	SAs must receive and approve the corrective action plan within 15 days from the date the sponsor received the notice and monitor the full implementation of the corrective action plan.	225.18(a)(2)(iii) and 225.18(c)(2)(ii).	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Govern- ments.	If corrective action has been taken to fully correct each serious management problem, SAs must notify a sponsor's executive director and chairman of the board of directors, and RPIs, that the serious management problem has been vacated. If corrective action has not been taken or fully implemented, the SA must notify the sponsor of its proposed termination and disqualification. The notice must inform the sponsor, responsible principals, and responsible individuals of the right and procedures for seeking a fair hearing.	225.18(a)(2)(iv) and 225.18(a)(6)(ii).	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Govern- ments.	SAs must submit written documentation to the hearing official prior to the beginning of the hearing, within 30 days after receiving the notice of action.	225.18(a)(2)(v) and 225.18(f)(1)(iii)(E).	53	3	159	2	318	0	318	318

ESTIMATED ANNUAL BURDEN FOR SFSP—Continued  
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
State/Local/ Tribal Govern- ments.	Hearing official must hold hearing, in addition to a review of written information upon written request for a fair hearing by the sponsor, responsible principals, or responsible individuals, to determine that the SA or sponsor followed Program requirements in taking action under appeal. State agencies must be allowed to attend, respond to testimony, and answer questions posed by the hearing official.	225.18(a)(2)(v) and 225.18(f)(2).	53	3	159	4	636	0	636	636
State/Local/ Tribal Govern- ments.	SAs must notify a sponsor's executive director and chairman of the board that serious management problems have been vacated and advise the institution that procedures and policies must be fully implemented to correct the serious management problem if the sponsor's appeal is upheld. If the sponsor's appeal is denied, the sponsor must be notified that the program agreement is terminated and declared seriously deficient.	225.18(a)(2)(vi) and 225.18(a)(6)(iii).	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Govern- ments.	SAs must conduct and prioritize follow-up reviews and more frequent full reviews of sponsors with serious management problems, including one full review occurring at least once every year.	225.18(c)(3) .....	53	3	159	20	3180	0	3180	3180
State/Local/ Tribal Govern- ments.	SAs must develop a contingency plan in place to ensure that eligible participants continue to have access to meal service.	225.18(d)(2) .....	53	3	159	2	318	0	318	318
State/Local/ Tribal Govern- ments.	If all serious management problems have been corrected and all debts have been repaid, SAs may elect to remove a sponsor and RPIs from the National Disqualified List, and must submit all requests for early removals to the appropriate FNSRO.	225.18(e)(2)(iii) .....	53	3	159	0.25	39.75	0	39.75	39.75

ESTIMATED ANNUAL BURDEN FOR SFSP—Continued  
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
State/Local/Tribal Governments.	SAs must enter into written agreements with FNS, consistent with 5 U.S.C. 552a(o) of the CMA, in order to participate in a matching program involving a FNS Federal system of records.	225.18(e)(3)(ii) .....	53	1	53	1	53	0	53	53
State/Local/Tribal Governments.	SAs may request FNS to waive the two-step independent verification and notice requirement of the CMA.	225.18(e)(3)(iii)(B) ..	53	1	53	1	53	0	53	53
State/Local/Tribal Governments.	SAs must send a necessary demand letter for the collection of unearned payments, including any assessment of interest, as described in §225.12(b), and refer the claim to the appropriate State authority for pursuit of the debt payment. SAs must assess interest on sponsors' debts established on or after July 29, 2002, based on the Current Value of Funds Rate, which is published annually by Treasury in the Federal Reserve and is available from the FNSRO, and notify the sponsor that interest will be charged on debts not paid in full within 30 days of the initial demand for remittance up to the date of payment.	225.18(g)(2) .....	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/Tribal Governments.	SAs must terminate for cause the Program agreement upon no later than 45 days after the date of the sponsor's disqualification by FNS.	225.18(h)(2)(i) .....	53	5	265	1	265	265	0	0
State/Local/Tribal Governments.	Sponsors must describe and document the action taken to correct each serious management problem in a corrective action plan and submit it to the SA.	225.18(c)(1) .....	933.3	1	933.3	0.25	233.33	0	233.33	233.33
Total State/Local/Tribal Government Reporting .....			986	4.71	4,643	1.94	8,991.58	265	8,726.58	8,726.58

ESTIMATED ANNUAL BURDEN FOR SFSP—Continued  
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
Businesses (Non-profit Institutions and Camps).	Sponsoring organizations that are approved to operate the Program in more than one State must provide: The number of affiliated sites it operates, by State; The number of unaffiliated sites it operates; the names, addresses, and phone numbers of the organization's headquarters and the officials who have administrative responsibility; and the names, addresses, and phone numbers of the financial records center and the officials who have financial responsibility.	225.6(c)(5) .....	133	1	133	1.25	166.25	0	166.25	166.25
Businesses (Non-profit Institutions and Camps).	Sponsors must describe and document the actions taken to correct each serious management problem in a corrective action plan and submit it to the SA.	225.18(c)(1) .....	477	1	477	0.25	119.25	0	119.25	119.25
Total Businesses (Non-profit Institutions and Camps) ....			477	1.28	610	0.47	285.5	0	285.5	285.5
Total Reporting .....			1,463	3.59	5,253	1.77	9,277.08	265	9,012.08	9,012.08
State/Local/Tribal Governments.	SAs must maintain a SA list and must include the following information: (1) Names and mailing addresses of each sponsor that is determined to have a serious management problem; (2) Names, mailing addresses, and dates of birth of each responsible principals and responsible individuals (RPIs); and (3) The status of the sponsor as it progresses through the stages of corrective action, termination, suspension, and disqualification, as applicable. (Forms FNS-843 and FNS-844.).	225.18(b) .....	53	145	7,685	0.08	641.70	0	641.70	641.70
Total State/Local/Tribal Government Recordkeeping .....			53	145	7,685	0.08	641.70	0	641.70	641.70
Total Recordkeeping .....			53	145	7,685	0.08	641.70	0	641.70	641.70



ESTIMATED ANNUAL BURDEN FOR SFSP—Continued  
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
State/Local/Tribal Governments.	The CSA must conduct a full review at the MSSO headquarters and financial records center. The CSA must coordinate the timing of reviews and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO.	225.6(n)(2)(iii) .....	53	3	159	0.25	39.75	0	39.75	39.75
Total State/Local/Tribal Government Public Disclosure ..			53	3	159	0.25	39.75	0	39.75	39.75
Total Public Disclosure .....			53	3	159	0.25	39.75	0	39.75	39.75
Total Burden .....			1,463.30	8.95	13,097.3	0.76	9,958.52	265	9,963.52	9,963.52

SUMMARY OF BURDEN  
[OMB #0584–0280]

Total No. Respondents .....	63,942
Average No. Responses per Respondent .....	6.33
Total Annual Responses .....	404,468.31
Average Hours per Response ..	1.17
Total Burden Hours .....	472,392.25
Current OMB Approved Burden Hours .....	462,699
Adjustments .....	0
Program Changes .....	9,693.52
Total Difference in Burden .....	9,693.52

Title: Child and Adult Care Food Program (CACFP).

Form Number: FNS–843 and FNS–844.

OMB Control Number: 0584–0055.

Expiration Date: 08/31/2025.

Type of Request: Revision.

Abstract: This is a revision of requirements in the information collection under OMB Control Number 0584–0055 that are being impacted by this rulemaking. USDA proposes to improve the serious deficiency process in the CACFP. This proposed rule impacts information reporting at the state/local/tribal government level, reporting at the business level (sponsoring organizations and facilities), and monitoring requirements for State agencies. Under this rule, USDA is proposing to codify into regulations provisions from the *Final Rule: Child Nutrition Program Integrity* to clarify provisions of the serious deficiency process, and to extend the process to unaffiliated centers participating in the CACFP. Furthermore, FNS published a notice, *Request for Information: The Serious Deficiency Process in the Child and Adult Care Food Program*, 84 FR 22431, May 17, 2019, to gather

information to help FNS understand firsthand the experiences of State agencies and program operators.

This rulemaking intends to revise the serious deficiency process to codify provisions from the *Final Rule: Child Nutrition Program Integrity* and to respond to comments from State agencies and participating institutions. The revisions will replace the term “serious deficiencies” that apply to program violations with the term “serious management problems”, as found in the National School Lunch Act (NSLA). They will also change the point at which a serious deficiency determination is made. Previously, the discovery of program violations would immediately lead to a serious deficiency declaration. The new process will move the serious determination near the end of the process, where the State agency will propose termination for failing to correct an institution’s serious management problems. Finally, the rulemaking will create a path to full correction defined by a timeframe and number of reviews. By incorporating all these program changes, FNS intends to reduce ambiguity navigating the serious deficiency process, remove stigma associated with the “serious deficiency” term, and improve program integrity by implementing a simpler process. The burden related to these proposals is reflected in the burden estimates for OMB Control Number 0584–0055. All of these changes are program changes.

Reporting

State Agencies

The changes proposed in this rule will impact the existing reporting requirements currently approved under

OMB Control Number 0584–0055 for State agencies.

USDA estimates that 56 State agencies will develop a process to share information on any institution, facility, responsible principals, or responsible individuals not approved to administer or participate in the Program to fulfill the requirement at 7 CFR 226.6(b)(2)(iii)(D)(2). USDA estimates that 56 State agencies would be required to develop an information-sharing process and that it takes approximately 1 hour to complete this requirement; which is estimated to add 56 annual burden hours and responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the requirement at 7 CFR 226.6(b)(2)(iii)(L) that State agencies report up-to-date information on multi-state sponsoring organizations (MSSOs) operations. USDA expects that 56 state agencies would be required to update 23 MSSO records per year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

The proposed rule will change the citations in 7 CFR part 226 that will change the Serious Deficiency Process from 7 CFR 226.6 to 226.25. As a part of these changes, the rule will create separate citations for applying institutions and for participating institutions. The currently approved collection combines the burden of applying institutions and participating institutions into a single citation per burden item. The following reporting requirements will remove reporting burden associated with participating

institutions from the preexisting citations, which will be added back into the collection with new citations at 7 CFR 226.25. Overall, no new burden will be added to the collection as a result of these citation changes.

The proposed rule will change the requirement at 7 CFR 226.6(c)(1)(iii)(A) to 7 CFR 226.6(c)(4). USDA estimates that 56 State agencies will be required to fulfill the existing requirement that SAs notify an institution's executive director and chairman of the board of directors that the institution's application has been determined seriously deficient. When the notice is issued, the State agency must add the institution to the State agency list, with the reason for the serious deficiency determination, and provide a copy of the notice to the appropriate FNSRO. USDA estimates that 56 State agencies will be required to submit 5 notices each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The existing requirement at 7 CFR 226.6(c)(1)(iii)(A) is currently approved with 560 responses and 140 burden hours. USDA estimates that 70 burden hours and 280 responses of these estimates are associated with the participating institutions, with the rest of the estimates associated with the applying institutions. USDA estimates that 70 annual burden hours and 280 responses will be subtracted from this existing requirement.

The proposed rule will change the requirement at 7 CFR 226.6(c)(1)(iii)(B) to 7 CFR 226.6(c)(5)(i)(A). USDA expects that 56 State agencies will be required to fulfill the existing requirement that State Agencies submit a copy of a notice that an institution's corrective action has been successful to the appropriate FNSRO for new, renewing, and participating institutions. USDA expects that 56 State agencies will be required to submit 3.5 notices each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The existing requirement at 7 CFR 226.6(c)(1)(iii)(B) is currently approved with 392 responses and 98 burden hours. USDA estimates that 49 burden hours and 196 responses of these estimates are associated with participating institutions, with the rest associated with the applying institutions. USDA estimates that 49 burden hours and 196 responses will be subtracted from this existing requirement.

The proposed rule will change the requirement at 7 CFR 226.6(c)(1)(iii)(C) to 7 CFR 226.6(c)(6). USDA estimates that 56 State agencies will be required

to fulfill the existing requirement that State agencies submit a copy of the application denial and proposed disqualification notice to FNSRO. USDA estimates that 56 State agencies will be required to submit 1.5 notices each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The existing requirement at 7 CFR 226.6(c)(1)(iii)(C) is currently approved with 168 responses and 42 burden hours. USDA estimates that 84 responses and 21 burden hours of these estimates are associated with the participating institutions, with the rest associated with the applying institutions. USDA estimates that 21 burden hours and 84 responses will be subtracted from this existing requirement.

The proposed rule will change the requirement at 7 CFR 226.6(c)(1)(iii)(E) to 7 CFR 226.6(c)(8). USDA expects that 56 State agencies will be required to fulfill the existing requirement that SAs submit copies of disqualification notices to the FNSRO for new, renewing, and participating institutions. USDA expects that 56 State agencies will be required to submit 1.5 notices each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The existing requirement at 7 CFR 226.6(c)(1)(iii)(E) is currently approved with 168 responses and 42 burden hours. USDA estimates that 84 responses and 21 burden hours of these estimates are associated with participating institutions, with the remaining estimates associated with the applying institutions. USDA estimates that 21 burden hours and 84 responses will be subtracted from this existing requirement.

The proposed rule will change the requirement at 7 CFR 226.6(p) for State agencies to develop and provide the use of a standard form of a written permanent agreement (which must specify the rights and responsibilities of both parties) between sponsoring organizations and day care homes, unaffiliated centers, outside-school-hours-care centers, at-risk afterschool care centers, emergency shelters, or adult day care centers for which the State agency has responsibility for Program operations to 7 CFR 226.6(n)(1). USDA expects that 15 State agencies will be required to develop and provide a standard form a year and that it takes approximately 6 hours per response to complete this requirement. The existing requirement at 7 CFR 226.6(p) has a total of 90 annual burden hours and 15 responses. The proposed rule is changing the regulatory citation for this requirement but otherwise has no further impact on the requirement or

its burden so no additional burden hours or responses will be added to this requirement.

The proposed rule will add additional reporting requirements that apply the Serious Deficiency Process to MSSOs operating the Program.

USDA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q) that State agencies must determine if a sponsoring organization is an MSSO and assume the role of a Cognizant State agency (CSA) if the MSSOs center of operations is located within the State. USDA estimates that the 56 State agencies will be required to make 23 MSSO determinations each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(1)(i) that State agencies must enter into a permanent written agreement with the MSSO. USDA expects that the 56 State agencies will be required to make 23 permanent agreements each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(1)(ii) that State agencies must approve the MSSOs administrative budget. USDA estimates that the 56 State agencies will be required to approve 23 administrative budgets each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(1)(iii) that State agencies must conduct monitoring of MSSO Program operations within the State. USDA expects that the 56 State agencies will be required to monitor 23 MSSOs each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(1)(iii)(C) that State agencies provide summaries of the MSSO reviews that are conducted to the CSA and if the State agency conducts a full review, the State agency

should request the necessary records from the CSA. USDA estimates that the 56 State agencies will be required to submit 23 MSSO review summaries to the CSA annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(1)(iv) that State agencies must conduct audit resolution activities. USDA estimates that the 56 State agencies will be required to conduct 5 audit resolution activities each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 70 annual burden hours and 280 responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(1)(v) that State agencies must notify all other State agencies that have an agreement with an MSSO that their agreement has been terminated and disqualification actions taken against that MSSO. USDA expects that the 56 State agencies will be required to make 23 notifications a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(2) that State agencies must determine if an MSSOs center of operations are located within the State and assume the role of the CSA. USDA estimates that the 56 State agencies will be required to make 23 MSSO determinations each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(2)(iii) that the CSA must conduct a full review of the MSSOs headquarters and financial records center, must coordinate the timing of the reviews, and make copies of the monitoring reports and findings available to all other State agencies that have agreements with the MSSO. USDA expects that the 56 State agencies will be required to conduct full reviews of 23 MSSO headquarters and financial records centers annually and that it takes approximately 20 hours to complete this requirement; which is

estimated to add 25,760 annual burden hours and 1,288 responses to the collection.

USDA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(2)(iv) that, if an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements. USDA estimates that the 56 State agencies will be required to establish audit thresholds and requirements for 6 for-profit MSSOs annually and that it takes approximately 1 hour to complete this requirement; which is estimated to add 336 annual burden hours and responses to the collection.

The proposed rule will change the requirement at 7 CFR 226.6(r) to 7 CFR 226.6(p), which requires State agencies to provide information on the importance and benefits of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and WIC income eligibility guidelines to participating institutions. USDA estimates that 56 State agencies will be required to fulfill the requirements each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The existing requirement at 7 CFR 226.6(r) has a total of 14 annual burden hours and 56 responses. The proposed rule is changing the regulatory citation for this requirement, but otherwise has no further impact on the requirement or its burden so no additional burden hours or responses will be added to the collection.

As a part of the Serious Deficiency Process, the proposed rule will be adding a requirement at 7 CFR 226.25(a)(2)(i) and (a)(3) that State agencies must identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem. USDA expects that 56 State agencies will be required to define a set of standards to identify serious management problems a year and that it takes approximately 1 hour to complete this requirement; which is estimated to add 56 burden hours and responses to the collection.

As a part of the changes to 7 CFR 226.6, the proposed rule subtracts burden from currently approved requirements to create separate citations for applying institutions and participating institutions. The burden associated with applying institutions remain in 7 CFR 226.6 while the burden associated with participating institutions is subtracted from the old citations and added to new citations in 7 CFR 226.25. Overall, no new burden

will be added to the collection as a result of the following changes.

USDA estimates that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(6)(i) that State agencies notify a participating institution's executive director and chairman of the board of directors, responsible principals, and responsible individuals that serious problems have been identified, must be addressed, and corrected. USDA estimates that 56 State agencies will notify 5 institutions a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The proposed requirement at the regulatory citations noted above adds back a total of 70 burden hours and 280 responses for the participating institutions which was subtracted from the old citation of 7 CFR 226.6(c)(1)(iii)(A) (originally approved with 560 responses and 140 burden hours for both the applying and participating institutions; it is now estimated that the applying institutions now have 70 burden hours and 280 responses). Therefore, USDA estimates that 70 hours and 280 responses will be added back to the collection.

USDA expects that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(6)(ii)(A) that State agencies notify a participating institution's executive director and chairman of the board of directors, responsible principals, and responsible individuals that the serious management problem has been vacated, update the State agency list, and provide a copy of the notice to the appropriate FNSRO. USDA expects that 56 State agencies will notify 3.5 institutions a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The proposed requirement at the regulatory citations noted above adds back a total of 49 burden hours and 196 responses for the participating institutions, which was subtracted from the old citation of 7 CFR 226.6(c)(1)(iii)(B) (originally approved with 98 burden hours and 392 responses for both the applying and participating institutions; it is now estimated that the applying institutions will have 49 burden hours and 196 responses). Therefore, USDA estimates that 49 hours and 196 responses will be added back to the collection.

USDA estimates that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(6)(ii)(B) that State agencies notify a participating institution's executive director and chairman of the board of directors,

responsible principals, and responsible individuals that the State agency proposes to terminate the institution's agreement and disqualify the institution, the responsible principals and responsible individuals. USDA estimates that 56 State agencies will notify 1.5 institutions a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The proposed requirement at the regulatory citations noted above adds back a total of 21 burden hours and 84 responses for the participating institutions, which was subtracted from the old citation of 7 CFR 226.6(c)(1)(iii)(C) (originally approved with 42 burden hours and 168 responses for both the applying and participating institutions; it is now estimated that the applying institutions will have 21 burden hours and 84 responses). Therefore, USDA estimates that 21 hours and 84 responses will be added back to the collection.

USDA expects that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(6)(iii)(A) and (B) that State agencies notify a participating institution's executive director and chairman of the board of directors, responsible principals, and responsible individuals of the appeal determination, and whether the institution's agreement is terminated, issue a notice of serious deficiency if the institution's agreement is terminated, update the State agency list, and provide a copy to the appropriate FNSRO. USDA expects that 56 State agencies will notify 1.5 institutions a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The proposed requirement at the regulatory citations noted above adds back a total of 21 burden hours and 84 responses for the participating institutions, which was subtracted from the old citation of 7 CFR 226.6(c)(1)(iii)(E) (originally approved with 42 burden hours and 168 responses for both the applying and participating institutions; it is now estimated that the applying institutions will have 21 burden hours and 84 responses). Therefore, USDA estimates that 21 hours and 84 responses will be added back to the collection.

The proposed rule will add additional requirements to 7 CFR 226.25 regarding the placement of institutions, day care homes, and unaffiliated centers that have been determined to have serious management problems.

USDA estimates that 56 State agencies will be required to fulfill the requirement at 7 CFR 226.25(b) that State agencies maintain a State agency list, made available to FNS upon

request. USDA estimates that the 56 State agencies will each make 10,570 updates annually ((6,843 Independent Child Care Centers + 89,853 Family Day Care Homes + 21,692 Unaffiliated Centers)/56 State Agencies) × 5 Steps in the Serious Deficiency Process = 10,570) and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 147,973.75 annual burden hours and 591,895 responses to this collection.

The proposed rule will add additional requirements to 7 CFR 226.25 regarding corrective action plans and monitoring requirements of State agencies.

USDA estimates that 56 State agencies will be required to fulfill the requirement at 7 CFR 226.25(c)(2)(iv)(C) that State agencies receive and approve submitted corrective action plans within 90 days from the date the institution received the notice and that the State agency monitor the full implementation of the corrective action plan. USDA estimates that the 56 State agencies will review 3 corrective action plans a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 42 annual burden hours and 168 responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the requirement at 7 CFR 226.25(c)(3)(i) and 226.6(k)(2) that State agencies conduct and prioritize follow-up reviews and more frequent full reviews of institutions with serious management problems. USDA expects that the 56 State agencies will have to conduct reviews of 39 participating institutions a year and that it takes approximately 20 hours to complete this requirement; which is estimated to add 43,680 annual burden hours and 2,184 responses to the collection.

The proposed rule will change the currently approved requirement at 7 CFR 226.6(c)(6)(ii)(G) to 7 CFR 226.25(d)(1). Under this requirement, State agencies are required to terminate for cause the Program agreement with a participating institution upon declaration of the facility or institution of being seriously deficient. USDA estimates that 56 State agencies will terminate 3 participating institutions each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The existing requirement at 7 CFR 226.6(c)(6)(ii)(G) has a total of 42 annual burden hours and 168 responses. The proposed rule is changing the regulatory citation for this requirement, but otherwise has no further impact on the requirement or its burden so no additional hours or responses will be

added to the collection as a result of this proposed rule.

The proposed rule will add additional requirements for State agencies to follow after terminating an agreement with a participating institution.

USDA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.25(d)(2) that State agencies develop a contingency plan for the transfer of facilities if a sponsoring organization is terminated or disqualified to ensure that eligible participants continue to have access to meals. USDA estimates that the 56 State agencies will develop 3 contingency plans each year and that it takes approximately 2 hours to complete this requirement; which is estimated to add 336 annual burden hours and 168 responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.25(e)(2)(iii) that, if all serious management problems have been corrected and all debts have been repaid, State agencies may elect to remove an institution, responsible principals, and responsible individuals from the National Disqualified List, and must submit all requests for early removals to the appropriate FNSRO.

USDA expects that the 56 State agencies will remove up to 3 institutions from the National Disqualified List each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 42 annual burden hours and 168 responses to the collection.

USDA estimates that 56 State agencies will be required to fulfill the new requirements at 7 CFR 226.25(e)(3)(ii) that State agencies must enter into written agreements with FNS, in order to participate in a matching program involving a FNS Federal system of records. USDA estimates that the 56 State agencies will enter into a CMA written agreement annually and that it takes approximately 1 hour to complete this requirement; which is estimated to add 56 annual burden hours and responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the new requirements at 7 CFR 226.25(e)(3)(iii)(B) that State agencies may request FNS to waive the two-step independent verification and notice requirement of the CMA. USDA expects that the 56 State agencies will submit a waiver request annually and that it takes approximately 1 hour to complete this requirement; which is estimated to add 56 annual burden hours and responses to the collection.

The proposed rule will change the remaining citations belonging to the

Serious Deficiency Process in 7 CFR 226.6 to 7 CFR 226.25. As these are changes only to citations, no new burden will be added to the collection.

USDA estimates that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(f)(1)(i)(A) and (f)(2)(i)(A) that State agencies initiate action for termination and disqualification upon determination of an imminent threat to the health and safety of participants or that the institution knowingly submitted a false or fraudulent claim, submit a combined notice of suspension, proposed termination, and proposed disqualification to the institution, and notify the appropriate FNSRO. USDA estimates that the 56 State agencies will take action for termination and disqualification against these participating institutions once a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.6(c)(5)(i)(A) and (B), (c)(5)(ii)(A) and (B), (c)(5)(ii)(D) and (c)(6)(ii)(B), so this requirement still has a total of 14 annual burden hours and 56 responses.

USDA expects that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(g) that State agencies annually submit administrative review (appeals) procedures to all institutions. USDA expects that the 56 State agencies will submit annual administrative procedures to 21,840 institutions a year and that it takes approximately 1 minute (0.02 hours) to complete this reporting requirement for each record. The number of annual burden hours and responses from this requirement remains unchanged from its older citation at 7 CFR 226.6(k)(4)(i), so this requirement still has a total of 364.73 annual burden hours and 21,840 responses.

USDA estimates that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(g)(1) that State agencies must submit administrative review (appeal) procedures when applicable action is taken. USDA estimates that the 56 State agencies will submit procedures 5 times a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.6(k)(4)(ii), so it still has a total of 70 annual burden hours and 280 responses.

USDA estimates that 56 State agencies will be required to fulfill the changed

requirement at 7 CFR 226.25(g)(1)(iii) that State agencies notify the institution's executive director and chairman of the board of directors, responsible principals, and responsible individuals that action is being taken against them, the basis for the action, and the procedures to be followed to request an administrative review (appeal) of the action. USDA estimates that the 56 State agencies will notify 3 participating institutions a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.6(k)(5)(i), so this requirement still has a total of 42 annual burden hours and 168 responses.

USDA expects that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(g)(1)(iv)(E) that State agencies submit written documentation to a hearing official prior to the beginning of an administrative hearing, within 30 days after receiving the notice of action. USDA expects that the 56 State agencies will submit written documentation to a hearing official 3 times a year and that it takes approximately 2 hours to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.6(k)(5)(v), so this requirement still has a total of 336 annual burden hours and 168 responses.

USDA estimates that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(g)(2) that State agencies provide participating institutions advanced notification at least 5 days in advance of the time and place of the hearing. USDA estimates that the 56 State agencies will notify 3 participating institutions a year and that it takes approximately 5 minutes (0.08 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.6(k)(5)(ii), so this requirement still has a total of 14.03 annual burden hours and 168 responses.

USDA expects that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(g)(2) that State agencies participate in a hearing to determine that the State agency followed Program requirements in taking action under appeal. USDA estimates that the 56 State agencies will participate in 3 hearings a year and that it takes approximately 4 hours to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged

from its older citation at 7 CFR 226.6(k)(5)(vi), so this requirement still has a total of 672 annual burden hours and 168 responses.

USDA estimates that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(g)(5)(i) and (ii) that participating institutions, responsible principals, and responsible individuals are informed of the decision made by the hearing official within 60 days of the date the State agency received the appeal request. USDA estimates that the 56 State agencies will notify 3 participating institutions a year and that it takes approximately 30 minutes (0.5 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.6(k)(5)(ix) and (k)(9), so it still has a total of 84 annual burden hours and 168 responses.

USDA expects that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(h)(3)(i) that State agencies send a necessary demand letter for the collection of unearned payments, including any assessment of interest, and refer the claim to the appropriate State authority for the pursuit of the debt payment. USDA estimates that the 56 State agencies will send 39 necessary demand letters a year and that it takes approximately 1 minute (0.02 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.14(a), so it still has a total of 36.47 annual burden hours and 2,184 responses.

#### Local Government Agencies

The changes proposed in this rule will impact the existing requirements currently approved under OMB Control Number 0584-0055 for local government agencies.

USDA estimates that 3 local government agencies will be required to fulfill the requirement at 7 CFR 226.6(b)(1)(xix) that sponsoring organizations approved to participate in the Program that operate in more than one state must provide the State with additional information about their operations. USDA estimates that 3 local government agencies will need to report on their operations once a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 45 annual burden minutes (0.75 hours) and 3 responses to the collection.

USDA expects that 3,257 local government agencies will be required to fulfill the requirement at 226.25(a)(2)(i) and 226.25(a)(3) that sponsoring

organizations must identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the institution or facility's ability to meet Program requirements. USDA expects that 3,257 local government agencies will develop a set of standards annually and that it takes approximately 1 hour to complete this requirement; which is estimated to add 3,257 annual burden hours and responses to the collection.

The proposed rule will change the following citation belonging to the Serious Deficiency Process in 7 CFR 226.16(l)(3)(i) to 226.25(a)(2)(ii), (a)(5) and (a)(7)(i). As these are changes only to citations, no new burden will be added to the collection.

USDA estimates that 83 local government agencies will be required to fulfill the requirement at 7 CFR 226.25(a)(2)(ii), (a)(5) and (a)(7)(i) that sponsoring organizations notify day care homes or unaffiliated centers that serious management problems have been identified, must be addressed, and corrected. USDA estimates that 83 local government agencies will send a notice each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The proposed requirement remains unchanged from its currently approved citation at 7 CFR 226.16(l)(3)(i), with a total of 20.75 annual burden hours and 83 responses.

The proposed rule requirements for the Serious Deficiency Process in 7 CFR 226.25 that affect local government agencies extend the Serious Deficiency Process to day care homes and unaffiliated centers and reflect the added requirements for local government agencies.

USDA expects that 3,257 local education agencies will be required to fulfill the requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(7)(ii)(A) that sponsoring organizations notify an institution's executive director, chairman of the board of directors, responsible principals, and responsible individuals that the serious management problems have been vacated. USDA expects that the 3,257 local government agencies will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. Therefore, USDA estimates that a total of 814.25 annual burden hours and 3,257 responses will be added to the collection.

USDA estimates that 3,257 local education agencies will be required to

fulfill the requirement at 7 CFR (a)(2)(ii), (a)(5), and (a)(7)(ii)(B) that sponsoring organizations notify an institution's executive director, chairman of the board of directors, responsible principals, and responsible individuals that corrective action has not fully corrected each serious management problem and that the sponsoring organization proposes to terminate the institution's agreement and disqualify the institution, responsible principals, and responsible individuals. USDA estimates that the 3,257 local government agencies will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 814.25 annual burden hours and 3,257 responses to the collection.

USDA expects that 3,257 local education agencies will be required to fulfill the requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(7)(iii)(A) and (B) that sponsoring organizations notify an institution's executive director, chairman of the board of directors, responsible principals, and responsible individuals of the appeal determination, and, if the appeal is denied, notify them that the institution's agreement is terminated and declare the institution or facility seriously deficient. USDA expects that the 3,257 local government agencies will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 814.25 annual burden hours and 3,257 responses to the collection.

USDA estimates that 3,257 local education agencies will be required to fulfill the requirement at 7 CFR 226.25(c)(1) that the institution, unaffiliated center, or day care home must submit, in writing, what corrective actions have been taken to correct each serious management problem. USDA estimates that the 3,257 local government agencies will submit a written record of corrective actions taken and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 814.25 annual burden hours and 3,257 responses to the collection.

USDA expects that 3,257 local education agencies will be required to fulfill the at 7 CFR 226.25(c)(3)(ii) that sponsoring organizations conduct follow-up reviews and more frequent full reviews to confirm that serious management problems are corrected. USDA expects that the 3,257 local government agencies will conduct a follow-up review and that it takes approximately 20 hours to complete this

requirement; which is estimated to add 65,140 annual burden hours and 3,257 responses to the collection.

USDA estimates that 3,257 local education agencies will be required to fulfill the requirement at 7 CFR 226.25(d)(1) that sponsoring organizations terminate for cause the Program agreement upon declaration of the institution or facility to be seriously deficient. USDA estimates that the 3,257 local government agencies will terminate an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 814.25 annual burden hours and 3,257 responses to the collection.

The proposed rule will change the following citation belonging to the Serious Deficiency Process in 7 CFR 226.16(d)(4)(viii) to 7 CFR 226.25(f)(1)(ii)(A) and 7 CFR 226.25(f)(2)(ii)(A). As these are changes only to citations, no new burden will be added to the collection.

USDA estimates that 814 local government agencies will be required to fulfill the changed requirement at 7 CFR 226.25(f)(1)(ii)(A) and (f)(2)(ii)(A) that sponsoring organizations initiate action for termination and disqualification upon determination of an imminent threat to the health and safety of participants or that the institution knowingly submitted a false or fraudulent claim and submit a combined notice of suspension, proposed termination, and proposed disqualification to the day care home provider or unaffiliated center. USDA estimates that the 814 local government agencies will take action for termination and disqualification against these participating institutions once a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The number of annual burden hours and responses from this requirement remains unchanged from its older citation at 7 CFR

226.16(d)(4)(viii), with a total of 203.5 annual burden hours and 814 responses. As a part of the revised serious deficiency process, the proposed rule will require State agencies to develop a contingency plan in place for the transfer of facilities if a sponsoring organization is terminated or disqualified. The added requirement, at § 226.25(d)(2), is necessary to ensure that eligible participants in the program do not lose meal access as a result of a State agency action against an institution with serious management problems. The burden for the 56 State agencies is estimated at 42 (for 0.25 hours and for 168 total annual responses), an increase of 42 annual

burden hours from the current collection. The new requirement to develop a contingency plan is included as a line item in the ICR associated with the rulemaking.

The proposed rule will also relocate the requirements for suspension in the event of an imminent threat to health and safety or the presence of false or fraudulent claims from § 226.25(c)(5) and (6) to a new home in § 226.25(f)(1)(i)(A) and 226.25(f)(2)(i)(A). The burden for the 56 State agencies is estimated to remain unchanged from the previous collection at 14 (for 0.25 hours and for 56 total annual responses). The burden for institutions, however, is expected to change due to adjustments accounting for FY2020 CACFP participation data. The burden for an estimated 728 local government agencies is expected to increase to 182 (for 0.25 hours and for 728 total annual responses), an increase of 161.25 hours from the current collection. Meanwhile, the burden for an estimated 4,154 business-level institutions is expected to decrease to 1,039 (for 0.25 hours and for 4,154 total annual responses), a decrease of 124 annual burden hours from the current collection. The moved suspension requirements have been included as line items in the ICR associated with this rulemaking.

As a part of the proposed rule, requirements regarding the appeals process will be relocated to § 226.25(g). State agencies will still need to acknowledge the receipt of a request for a fair hearing, submit written documentation to the hearing official, provide a fair hearing, and inform the sponsor, responsible principals, and responsible individuals of the hearing official's final decision. The burden for the 56 State agencies will still be 1,106.028 (for 6.5835 hours and for 168 total annual responses). As such, the burden is expected to remain unchanged from the previous collection. The fair hearing requirements are listed as line items in the ICR associated with this rulemaking.

Along with the reporting requirements of the serious deficiency rule, State agencies will be required to maintain a State agency list that collects information on each institution and facility determined to have serious management problems; the names, mailing addresses, and dates of birth for each responsible principal and responsible individual, as well as the institution or facility's status as it progresses through the serious deficiency process. The recordkeeping requirements already existed in the previous collection, but the proposed

rule will be moving the State agency list requirements to § 226.25(b) to group the requirement with the other provisions of the serious deficiency process for participating institutions. The burden for the 56 State agencies is estimated at 1,400 (for 5 hours and for 280 total annual responses), resulting in no change from the current collection.

The proposed rule will be offering an opportunity for institutions, responsible principals, and responsible individuals to be removed from the National Disqualified List earlier than the seven-year timetable, at State agency discretion. The disqualified institutions, responsible principals, and responsible individuals must correct all serious management problems and repay any outstanding debts due to unearned payments. Offering this new opportunity will incentivize institutions and the responsible individuals and principals to correct their serious management problems after they have been disqualified by allowing them to exit the National Disqualified List and reapply for participation in the Program. Under the proposed rule, FNS will be amending the regulations at § 226.25(e)(2)(iv), to give State agencies the ability to remove an institution and the responsible principals and individuals from the National Disqualified List and require the State agency to submit all early removals to the appropriate FNSRO.

The burden associated with requests for early removals for the 56 State agencies is estimated at 42 (0.25 hours and for 168 total annual respondents). Overall, the burden is expected to increase the burden to 42 annual burden hours, an increase of 42 hours from the current collection. The requirement to submit all requests for early removal from the National Disqualified List is included as a line item in the ICR associated with this collection.

Similarly, the burden associated with sending a necessary demand letter for the collection of unearned payments remains the same as the prior collection. The only difference is that the citation has moved from § 226.14(a) to § 226.25(h)(3)(i). The burden for the 56 State agencies is estimated 42 (for 0.25 hours and for 168 total annual responses). Overall, FNS expects that the burden associated with sending the necessary demand letter remains unchanged from the current collection. The burden associated with this requirement will be included as a line item in the ICR associated with this rulemaking.

At the conclusion of the serious deficiency process, the proposed rule requires that the State agency terminate

an institution's agreement no later than 45 days after the date of the institution's disqualification by FNS. The termination requirement has moved from § 226.6 to § 226.25(i)(2)(A). By consolidating this requirement with other serious deficiency requirements for participating institutions should improve the readability of the CACFP regulations for State agencies. FNS estimates that the burden for the 56 State agencies will remain at 42 (for 0.25 hours and for 168 total annual responses), unchanged from the current collection.

Other requirements that have changed their citations, such as the development of a standard form of written permanent agreement and provide information on Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to participants, from their previous citations in the current collection. The development of a standard form of written permanent agreement has moved from § 226.6(p) to § 226.6(n)(1). The burden for the 56 State agencies is estimated as 90 (for 6 hours and for 15 total annual responses), unchanged from the current collection. Meanwhile, the requirement to provide WIC information moved from § 226.5(r) to § 226.6(p) and is estimated to have a burden of 14 (for 0.25 hours and for 56 total annual respondents). The estimated burden for the WIC information requirements is expected to remain unchanged from the current collection as well. The burden associated with this requirement will be included as a line item in the ICR associated with this rulemaking. To address comments from State agencies, the proposed rule will be amending § 226.6(b)(1)(xix), (b)(2)(iii)(D)(2), (b)(2)(iii)(L), and (q) to add specific requirements regarding Multi-State Sponsoring Organizations (MSSOs). Prior to the proposed rule, the application process for MSSOs was extremely complicated. State agencies asked for guidance on how to approach MSSOs during the application process, but the existing FNS guidance was outdated and conflicted with the regulations in 2 CFR part 200. The new requirements provide a clear process as to how State agencies will approach MSSOs applying to participate in the CACFP.

Under the new requirements, sponsoring organizations approved to operate in more than one state will be required to submit more information than is required in the application process, State agencies will be required to develop a process to share that information with other Child Nutrition Program State agencies, and ensure that

the information on MSSO operations are up to date. Furthermore, State agencies will be required to determine if a sponsoring organization qualifies as an MSSO during their application, enter permanent written agreements with the MSSO, approve the MSSO administrative budget, conduct monitoring of the MSSOs program operations, conduct audit resolution activities, notify other State agencies that have an agreement with the MSSO after termination and disqualification actions, and assume the role of a Cognizant State Agency (CSA) if the MSSOs center of operations is located within the State. Adding the additional process should provide a clear process for State agencies to follow and eliminate any ambiguity under the current collection regarding MSSOs.

The burden for the 56 State agencies determining whether an applying institution operates in more than one state is estimated at 294 (for 0.25 hours and for 1,176 total annual responses). Developing the required process to share MSSO information is estimated at 56 (for 1 hour and for 56 total annual responses) while ensuring that MSSO operations are up to date is estimated at 294 (for 0.25 hours and for 1,176 total annual responses). The burden for the 56 State agencies to review participating MSSOs is estimated at 1,834 (for 1.75 hours and 7,336 total annual responses). FNS expects the overall burden regarding the new MSSO requirements to increase burden to 2,478 annual burden hours, an increase of 2,478 hours.

Meanwhile, the burden hours for institutions is expected to increase to comply with the submission of additional information to the appropriate State agency. The burden for the estimated 3 local government agencies is expected at 0.75 (for 0.25 hours and 3 total annual responses), increasing the burden to 0.75 annual burden hours, an increase of 0.75 hours. Business-level institutions must also comply with the new requirement. An estimated 997 business-level institutions are expected to have an estimated burden at 249 (for 0.25 hours and for 997 total annual responses), increasing the burden to 249 annual burden hours. The new MSSO requirements have been included as line items in the ICR associated with this rulemaking.

The proposed rule will be extending the serious deficiency process to unaffiliated centers. While family day care homes and independent centers were included in the serious deficiency process, the current regulations exclude unaffiliated centers from the serious

deficiency process. Excluding unaffiliated centers from the serious deficiency process created ambiguity between State agencies and unaffiliated centers as there was no defined process on how to treat unaffiliated centers in the CACFP. By extending the process to unaffiliated centers, the proposed rule formalizes the relationship between State agencies and unaffiliated centers and establishes a process for accountability for complying with program requirements, protecting the program integrity of the CACFP. The proposed rule amends regulations at § 226.17(e) and (f), 226.17a(f)(2)(i) and (ii), 226.19(d), and 226.19a(d) to separate out unaffiliated centers from independent centers and extend the serious deficiency process to unaffiliated centers.

The burden for an estimated 28,175 business-level institutions is estimated at 5,423.124 (for 0.25 hours and for 21,692) for unaffiliated child care centers; 1,710.8665 (for 0.25 hours and for 6,843 total annual responses) for independent child care centers; 5,423.124 (for 0.25 hours and for 21,692) for unaffiliated afterschool child care centers; 1,710.8665 (for 0.25 hours and for 6,843 total annual responses) for independent afterschool child care centers; 5,423.124 (for 0.25 hours and for 21,692) for unaffiliated outside-school-hours child care centers; and 1,710.8665 (for 0.25 hours and for 6,843 total annual responses) for independent outside-school-hours child care centers. FNS expects the burden to increase overall to 21,401.9715 annual burden hours, an increase of 21,401.9715, for these requirements.

The burden for an estimated 28,535 business-level facilities is estimated at 5,423.12 (for 0.25 hours and for 21,692 total annual responses) for unaffiliated child care centers; 1,710.87 (for 0.25 hours and for 6,843 total annual responses) for independent child care centers; 5,423.12 (for 0.25 hours and for 21,692 total annual responses) for unaffiliated afterschool child care centers; 1,710.87 (for 0.25 hours and for 6,843 total annual responses) for independent afterschool child care centers; 5,423.12 (for 0.25 hours and for 21,692 total annual responses) for unaffiliated outside-school-hours child care centers; and 1,710.87 (for 0.25 hours and for 6,843 total annual responses) for independent outside-school-hours child care centers. FNS expects the burden to increase overall to 28,535 annual burden hours, an increase of 28,535, for these requirements. The requirements for unaffiliated centers will be included as line items in the ICR associated with this rulemaking. The

current approved burden for OMB Control # 0584–0055 is 4,213,210.887 hours. This rulemaking is expected to increase burden by 523,837.943 hours to account for the new requirements. In addition, the burden is expected to decrease by 446,677 hours due to adjustments accounting for CACFP participation data collected from FY2022. Taking account of decreases in the number of sponsoring organizations, facilities, and participating households in the SFSP, the burden is expected to increase by 77,170.390 hours, resulting in a revised total burden of 4,290,381.277 hours.

This rulemaking will add clarity to the serious deficiency process by defining key terms, establish a timeline for full correction, and establish criteria for determining when the serious deficiency process must be implemented. In addition, this rulemaking would also define procedures for termination for cause and disqualification, implement legal requirements for records maintained on individuals on the National Disqualified List, and incorporate additional procedures to account for the participation of multi-State sponsoring organizations. The proposed rule is intended to improve the integrity of the CACFP.

#### Institutions

The changes proposed in this rule will introduce new reporting requirements to the existing requirements currently approved under OMB Control Number 0584–0055 for business level institutions.

USDA estimates that 1,116 institutions will be required to fulfill the requirement at 7 CFR 226.6(b)(1)(xix) that institutions approved to participate in the Program that operate in more than one state must provide the State with additional information about their operations. USDA estimates that 1,116 institutions will need to report on their operations once a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 279 annual burden hours and 1,116 responses to the collection.

USDA expects that 21,692 institutions will be required to fulfill the requirement at 7 CFR 226.17(e) that sponsoring organizations must enter into a permanent written agreement, which specifies the rights and responsibilities of both parties, with an unaffiliated sponsored child care center participating in the Program. USDA expects that 21,692 institutions will have to enter into an agreement annually and that it takes approximately



15 minutes (0.25 hours) to complete this requirement; which is estimated to add 5,423.12 hours and 21,692 responses to the collection.

USDA estimates that 6,843 institutions will be required to fulfill the requirement at 7 CFR 226.17(f) that independent child care centers must enter into a permanent written agreement, which specifies the rights and responsibilities of both parties, with the State agency. USDA estimates that 6,843 institutions will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 1,710.87 annual burden hours and 6,843 responses to the collection.

USDA expects that 21,692 institutions will be required to fulfill the requirement at 7 CFR 226.17a(f)(2)(i) that sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored afterschool child care center participating in the Program. USDA expects that 21,692 institutions will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 5,423.12 annual burden hours and 21,692 responses to the collection.

USDA estimates that 6,843 institutions will be required to fulfill the requirement at 7 CFR 226.17a(f)(2)(ii) that independent afterschool child care centers must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with the State agency. USDA estimates that 6,843 institutions will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 1,710.87 annual burden hours and 6,843 responses to the collection.

USDA expects that 21,692 institutions will be required to fulfill the requirement at 7 CFR 226.19(d) that sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored outside-school-hours child care centers participating in the Program. USDA expects that 21,692 institutions will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 5,423.12 hours and 21,692 responses to the collection.

USDA estimates that 6,843 institutions will be required to fulfill the requirement at 7 CFR 226.19a(d) that

sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored adult day care centers participating in the Program. USDA estimates that 6,843 institutions will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 1,710.87 annual burden hours and 6,843 responses to the collection.

USDA expects that 18,601 institutions will be required to fulfill the requirement at 226.25(a)(2)(i) and 226.25(a)(3) that sponsoring organizations must identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the institution or facility's ability to meet Program requirements. USDA expects that 18,601 institutions will develop a set of standards annually and that it takes approximately 1 hour to complete this requirement; which is estimated to add 18,601 annual burden hours and responses to the collection.

The proposed rule will change the following citation belonging to the Serious Deficiency Process in 7 CFR 226.16(l)(3)(i) to 7 CFR 226.25(a)(2)(ii), (a)(5) and (a)(7)(i). As these are changes only to citations, no new burden will be added to the collection.

USDA estimates that 540 institutions will be required to fulfill the requirement at 7 CFR 226.25(a)(2)(ii), (a)(5) and (a)(7)(i) that sponsoring organizations notify day care homes or unaffiliated centers that serious management problems have been identified, must be addressed, and corrected. USDA estimates that 540 institutions will send a notice each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The proposed requirement remains unchanged from its currently approved citation at 7 CFR 226.16(l)(3)(i), with a total of 135 annual burden hours and 540 responses.

The proposed rule requirements for the Serious Deficiency Process in 7 CFR 226.25 that affect institutions extend the Serious Deficiency Process to day care homes and unaffiliated centers, and reflect the added requirements for institutions.

USDA expects that 18,601 institutions will be required to fulfill the reporting requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(7)(ii)(A) that sponsoring organizations notify an institution's executive director, chairman of the board of directors, responsible

principals, and responsible individuals that the serious management problems have been vacated. USDA expects that the 18,601 institutions will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 4,650.25 annual burden hours and 18,601 responses to the collection.

USDA estimates that 18,601 institutions will be required to fulfill the requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(7)(ii)(B) that sponsoring organizations notify an institution's executive director, chairman of the board of directors, responsible principals, and responsible individuals that the sponsoring organization proposes to terminate the institution's agreement and disqualify the institution, responsible principals, and responsible individuals. USDA estimates that the 18,601 institutions will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 4,650.25 annual burden hours and 18,601 responses to the collection.

USDA estimates that 18,601 institutions will be required to fulfill the requirements at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(7)(iii)(A) that sponsoring organizations notify an institution's executive director, chairman of the board of directors, responsible principals, and responsible individuals of the appeal determination. USDA estimates that 18,601 institutions will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 4,650.25 annual burden hours and 18,601 responses to the collection.

USDA expects that 18,601 institutions will be required to fulfill the requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(7)(iii)(B) that sponsoring organizations must notify the day care home or unaffiliated center's executive director, chairman of the board of directors, responsible principals, and responsible individuals that the agreement is terminated and declare that the institution or facility is seriously deficient. USDA expects that the 18,601 institutions will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 4,650.25 annual burden hours and 18,601 responses to the collection.

USDA estimates that 18,601 institutions will be required to fulfill the requirement at 7 CFR 226.25(c)(1) that the institution, unaffiliated center, or

day care home must submit, in writing, what corrective actions have been taken to correct each serious management problem. USDA estimates that the 18,601 institutions will submit a written record of corrective actions taken and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 4,650.25 annual burden hours and 18,601 responses to the collection.

USDA expects that 18,601 institutions will be required to fulfill the requirement at 7 CFR 226.25(c)(3)(ii) that sponsoring organizations must conduct reviews to confirm that the serious management problems are corrected. USDA expects that the 18,601 institutions will conduct a follow-up review and that it takes approximately 20 hours to complete this requirement; which is estimated to add 372,020 annual burden hours and 18,601 to the collection.

USDA estimates that 18,601 institutions will be required to fulfill the requirement at 7 CFR 226.25(d)(1) that sponsoring organizations terminate for cause the Program agreement upon declaration of the institution or facility to be seriously deficient. USDA estimates that the 18,601 institutions will terminate an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 4,650.25 annual burden hours and 18,601 responses to the collection.

The proposed rule will change the following citation belonging to the Serious Deficiency Process in 7 CFR 226.16(d)(4)(viii) to 7 CFR 226.25(f)(1)(ii)(A) and (f)(2)(ii)(A). As these are changes only to citations, no new burden will be added to the collection.

USDA estimates that 4,650 local government agencies will be required to fulfill the changed requirement at 7 CFR 226.25(f)(1)(ii)(A) and 226.25(f)(2)(ii)(A) that sponsoring organizations initiate action for termination and disqualification upon determination of an imminent threat to the health and safety of participants or that the institution knowingly submitted a false or fraudulent claim. USDA estimates that the 4,650 local government agencies will take action for termination and disqualification against these participating institutions once a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.16(d)(4)(viii), with a total of

1,162.50 annual burden hours and 4,650 responses.

#### Facilities

The changes proposed in this rule will introduce new reporting requirements to the existing requirements that are currently approved under OMB Control Number 0584–0055 for business level facilities.

USDA expects that 21,692 facilities will be required to fulfill the requirement at 7 CFR 226.17(e) that sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored child care center participating in the Program. USDA expects that 21,692 facilities will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement' which is estimated to add 5,423.12 hours and 21,692 responses to the collection.

USDA estimates that 6,843 facilities will be required to fulfill the requirement at 7 CFR 226.17(f) that independent child care centers must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with the State agency. USDA estimates that 6,843 facilities will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 1,710.87 annual burden hours and 6,843 responses to the collection.

USDA expects that 21,692 facilities will be required to fulfill the requirement at 7 CFR 226.17a(f)(2)(i) that sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored afterschool child care center participating in the Program. USDA expects that 21,692 facilities will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 5,423.12 annual burden hours and 21,692 responses to the collection.

USDA estimates that 6,843 facilities will be required to fulfill the requirement at 7 CFR 226.17a(f)(2)(ii) that independent afterschool child care centers must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with the State agency. USDA estimates that 6,843 facilities will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is

estimated to add 1,710.87 annual burden hours and 6,843 responses to the collection.

USDA expects that 21,692 facilities will be required to fulfill the requirement at 7 CFR 226.19(d) that sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored outside-school-hours child care center participating in the Program. USDA expects that 21,692 facilities will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 5,423.12 hours and 21,692 responses to the collection.

USDA estimates that 6,843 facilities will be required to fulfill the requirement at 7 CFR 226.19a(d) that sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored adult day care center participating in the Program. USDA estimates that 6,843 facilities will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 1,710.87 annual burden hours and 6,843 responses to the collection.

#### Recordkeeping

##### State Agencies

The proposed rule will change the recordkeeping requirement at 7 CFR 226.6 to 7 CFR 226.25(b), which requires State agencies to collect and maintain on file CACFP agreements (Federal/State and State/Institutions), records received from applicant and participating institutions, National Disqualified Lists/State Agency Lists, and documentation of any administrative review (appeals), Program assistance, activities, results, and corrective actions.

USDA estimates that 56 State agencies will fulfill the requirement at 7 CFR 226.25(b). As a part of the requirement, USDA estimates that the 56 State agencies will maintain 5 sets of records and that it takes approximately 5 hours to complete this recordkeeping requirement for each record. The FNS–843 Report of Disqualification from Participation: Institution and Responsible Principals/Individuals and the FNS–844 Report of Disqualification from Participation—Individually Disqualified Responsible Principal/Individual or Day Care Home Provider forms are included among the records associated with this requirement. The

proposed requirement does not change from the existing requirement at 7 CFR 226.6 in the currently approved collection, so this requirement still has a total of 1,400 annual burden hours and 280 responses.

USDA expects that 56 State agencies will fulfill the requirement at 7 CFR 226.25(c) that State agencies must collect and maintain on file corrective action plans submitted by institutions, unaffiliated centers, or day care homes, in writing, which must discuss what corrective actions have been taken to correct each serious management problem. USDA expects that the 56 State agencies will each keep 3 records for submitted corrective action plans annually and that it takes 1 hour and 30 minutes (1.5 hours) to complete this requirement; which is estimated to add 252 annual burden hours and 168 responses to the collection.

#### Public Disclosure

##### State Agencies

The proposed rule will add an additional public disclosure requirement at 7 CFR 226.6(q)(2)(iii) as a part of the new review process for Multi-State Sponsoring Organizations (MSSOs).

USDA estimates that 56 State agencies will fulfill the requirement at 7 CFR 226.6(q)(2)(iii) that the Cognizant State Agency (CSA) must conduct a full review at the MSSO headquarters and financial records center, must

coordinate the timing of the reviews and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO. USDA estimates that the 56 State agencies will each disclose the findings of 23 MSSO reviews to other State agencies annually and that it takes 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

FNS estimates that the burden estimates for the proposals outlined in this rulemaking, will have 79,040 respondents, 985,507 total annual responses, and 760,711 total burden hours. Therefore, FNS estimates that as a result of this proposed rulemaking, OMB Control Number 0584-0055 will have 3,852,077 respondents, 17,165,505 responses and 4,968,899 burden hours, an increase of approximately 57,128 respondents, 952,412 responses, and 755,688 burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

#### Reporting

*Respondents (Affected Public):* Businesses; and State, Local, and Tribal Government. The respondent groups identified includes institutions, facilities, State agencies, and Local government agencies.

*Estimated Number of Respondents:* 78,984.

*Estimated Number of Responses per Respondent:* 12.455.

*Estimated Total Annual Responses:* 983,771.

*Estimated Time per Response:* 0.77.

*Estimate Total Annual Burden on Respondents:* 758,737.

#### Recordkeeping

*Respondents (Affected Public):* State, Local, and Tribal Government. The respondent groups identified include State agencies.

*Estimated Number of Respondents:* 56.

*Estimated Number of Responses per Respondent:* 8.

*Estimated Total Annual Responses:* 448.

*Estimated Time per Response:* 3.69.

*Estimate Total Annual Burden on Respondents:* 1,652.

#### Public Disclosure

*Respondents (Affected Public):* State, Local, and Tribal Government. The respondent groups identified include State agencies.

*Estimated Number of Respondents:* 56.

*Estimated Number of Responses per Respondent:* 23.

*Estimated Total Annual Responses:* 1,288.

*Estimated Time per Response:* 0.250.

*Estimated Total Annual Burden on Respondents:* 322.

ESTIMATED ANNUAL BURDEN FOR CACFP  
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual hours current approved burden hours	Program changes	Total difference in burden
State Agencies .....	SAs must develop a process to share information on any institution, facility, or RPIs not approved to administer or participate in the programs as described under paragraph (b)(2)(iii)(A)(1) of this section. The SA must work closely with any other Child Nutrition Program SA within the State to ensure information is shared for program purposes and on a timely basis. The process must be approved by FNS.	226.6(b)(2)(iii)(D)(2)	56	1.000	56.000	1.000	56.000	0.000	56.000	56.000
State Agencies .....	SA must ensure that the MSSOs operations, as described in paragraph (b)(1)(xviii), are up-to-date. If the MSSO has facilities not previously reported to the SA, as described in paragraph (b)(1)(xviii), the MSSO must update the information.	226.6(b)(2)(iii)(L) .....	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State Agencies .....	SAs must notify an institution's executive director and chairman of the board of directors that the institution has been determined to be seriously deficient. At the same time the notice is issued, the SAs must add the institution to the SA list, along with the basis for the serious deficiency determination, and provide a copy of the notice to the appropriate FNS Regional Office (FNSRO).	226.6(c)(4) .....	56	5.000	280.000	0.250	70.000	140.000	-70.000	-70.000
State Agencies .....	SAs must submit a copy of successful corrective action (temporary derelict or serious deficiency determination) notices to FNSRO for new, renewing, and participating institutions.	226.6(c)(5)(i)(A) .....	56	3.500	196.000	0.250	49.000	98.000	-49.000	-49.000
State Agencies .....	SAs must submit a copy of application denial and proposed disqualification notice to FNSRO.	226.6(c)(6) .....	56	1.500	84.000	0.250	21.000	42.000	-21.000	-21.000
State Agencies .....	SAs must submit copies of disqualification notices to the FNSRO for new, renewing, and participating institutions.	226.6(c)(8) .....	56	1.500	84.000	0.250	21.000	42.000	-21.000	-21.000
State Agencies .....	SAs must develop and provide for the use of a standard form of written permanent agreement between each sponsoring organization and day care home or unaffiliated centers, outside-school-hours care centers, at-risk afterschool care centers, emergency shelters, or adult day care centers for which it has the responsibility for Program operations. The agreement must specify the rights and responsibilities of both parties.	226.6(n)(1) .....	15	1.000	15.000	6.000	90.000	90.000	0.000	0.000
State Agencies .....	SAs must determine if a sponsoring organization is an MSSO, as described in paragraphs (b)(1)(xv) and (b)(2)(iii)(L). SAs must assume the role of the CSA, if the MSSOs center of operations is located within the State. Each SA that approves an MSSO must follow the requirements described in paragraph (i).	226.6(q) .....	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State Agencies .....	SAs must enter into a permanent written agreement with the MSSO, as described in paragraph (b)(4).	226.6(q)(1)(i) .....	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State Agencies .....	SAs must approve the MSSOs administrative budget.	226.6(q)(1)(ii) .....	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000

ESTIMATED ANNUAL BURDEN FOR CACFP—Continued  
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual burden hours current approved burden hours	Program changes	Total difference in burden
State Agencies	SAs must conduct monitoring of MSSO Program operations within the State, as described in paragraph (k)(4). The SA should coordinate monitoring with the CSA to streamline reviews and minimize duplication of the review content. The SA may base the review cycle on the number of facilities operating within the State.	226.6(q)(1)(iii)	56	23,000	1,288,000	0.250	322,000	0.000	322,000	322,000
State Agencies	SAs must provide summaries of the MSSO reviews that are conducted to the CSA. If the SA chooses to conduct a full review, the SA should request the necessary records from the CSA.	226.6(q)(1)(iii)(C)	56	23,000	1,288,000	0.250	322,000	0.000	322,000	322,000
State Agencies	SAs must conduct audit resolution activities. The SA must review audit reports, address audit findings, and implement corrective actions, as required under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415.	226.6(q)(1)(iv)	56	5,000	280,000	0.250	70,000	0.000	70,000	70,000
State Agencies	SAs must notify all other State agencies that have agreements with the MSSO of termination and disqualification actions, as described in paragraph (c)(2)(i).	226.6(q)(1)(v)	56	23,000	1,288,000	0.250	322,000	0.000	322,000	322,000
State Agencies	If it determines that an MSSO's center of operations is located within the State, the SA must assume the role of the CSA.	226.6(q)(2)	56	23,000	1,288,000	0.250	322,000	0.000	322,000	322,000
State Agencies	The CSA must conduct a full review at the MSSO headquarters and financial records center. The CSA must coordinate the timing of the reviews and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO.	226.6(q)(2)(ii)	56	23,000	1,288,000	20.000	25,760,000	0.000	25,760,000	25,760,000
State Agencies	If an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements.	226.6(q)(2)(iv)	56	6,000	336,000	1.000	336,000	0.000	336,000	336,000
State Agencies	SAs must provide information on the importance and benefits of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and WIC income eligibility guidelines to participating institutions.	226.6(p)	56	1,000	56,000	0.250	14,000	14,000	0.000	0.000
State Agencies	SAs must identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the institution or facility's ability to meet Program requirements.	226.25(a)(2)(i) and 226.25(a)(3)	56	1,000	56,000	1.000	56,000	0.000	56,000	56,000

<p>State Agencies .....</p> <p>SAs must notify an institution's executive director and chairman of the board of directors, and RPIs, that serious management problems have been identified, must be addressed, and corrected. The notice must identify all aspects of the serious management problem; reference specific regulatory citations, instruction, or policies; name all of the RPIs; describe the action needed to correct the serious management problem; and set a deadline for completing the corrective action. At the same time, the SA must add the institution and RPIs to the SA list and provide a copy of the notice to the appropriate FNSRO.</p>	<p>226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(6)(i).</p>	<p>56</p>	<p>5.000</p>	<p>280.000</p>	<p>0.250</p>	<p>70.000</p>	<p>0.000</p>	<p>70.000</p>	<p>70.000</p>	<p>70.000</p>
<p>State Agencies .....</p> <p>If corrective action has been taken to fully correct each serious management problem, SAs must notify an institution's executive director and chairman of the board of directors, and RPIs, that the serious management problem has been vacated. At the same time, the SA must update the SA list and provide a copy of the notice to the appropriate FNSRO.</p>	<p>226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(6)(ii)(A).</p>	<p>56</p>	<p>3.500</p>	<p>196.000</p>	<p>0.250</p>	<p>49.000</p>	<p>0.000</p>	<p>49.000</p>	<p>49.000</p>	<p>49.000</p>
<p>State Agencies .....</p> <p>If corrective action has not fully corrected each serious management problem, SAs must notify an institution's executive director and chairman of the board of directors, and RPIs, that the SA proposes to terminate the institution's agreement and disqualify the institution and RPIs. SA must notify the institution of the procedures for seeking a fair hearing in accordance with paragraph f of the proposed termination and proposed disqualifications. At the same time, the SA must update the SA list and provide a copy of the notice to the appropriate FNSRO.</p>	<p>226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(6)(ii)(B).</p>	<p>56</p>	<p>1.500</p>	<p>84.000</p>	<p>0.250</p>	<p>21.000</p>	<p>0.000</p>	<p>21.000</p>	<p>21.000</p>	<p>21.000</p>
<p>State Agencies .....</p> <p>If appeal is upheld, SAs must notify the institution and facility that confirms the serious management problem is vacated and advise the institution and facility that procedures and policies must be implemented to fully correct the serious management problem. If the fair hearing is denied, SAs must notify the institution's executive director and chairman of the board of directors, and RPIs, that the agreement is terminated and declare the institution or facility seriously deficient. SAs must issue a serious deficiency notice that informs the institution, facility, and RPIs of their disqualification from Program participation. At the same time, the SA must update the SA list and provide a copy of the notice to the appropriate FNSRO.</p>	<p>226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(6)(iii)(A) and (B).</p>	<p>56</p>	<p>1.500</p>	<p>84.000</p>	<p>0.250</p>	<p>21.000</p>	<p>0.000</p>	<p>21.000</p>	<p>21.000</p>	<p>21.000</p>
<p>State Agencies .....</p> <p>The State agency must maintain a State agency list, made available to FNS upon request, and must include the following information: Names and mailing addresses of each institution, day care home or unaffiliated center that is determined to have a serious management problem; Names, mailing addresses, and dates of birth of each responsible principal and responsible individual; The status of the institution, day care home or unaffiliated center, as it progresses through the stages of corrective action, termination, suspension, and disqualification, full correction, as applicable. Within 10 days of receiving a notice of termination and disqualification from a sponsoring organization, the State agency must provide FNS with the information as described in paragraph (b)(1)(A) and (B) of this section.</p>	<p>226.25(b) .....</p>	<p>56</p>	<p>10,570</p>	<p>591,895.000</p>	<p>0.250</p>	<p>147,973.750</p>	<p>0.000</p>	<p>147,973.750</p>	<p>147,973.750</p>	<p>147,973.750</p>

ESTIMATED ANNUAL BURDEN FOR CACFP—Continued  
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual burden hours current approved burden hours	Program changes	Total difference in burden
State Agencies	SAs must receive and approve the corrective action plan within 90 days from the date the institution received the notice and monitor the full implementation of the corrective action plan.	226.25(c)(2)(iv)(C)	56	3.000	168.000	0.250	42.000	0.000	42.000	42.000
State Agencies	SAs must conduct and prioritize follow-up reviews and more frequent full reviews of institutions with serious management problems, as described in 7 CFR 226.6(k)(6)(ii). An institution must have at least two full reviews occurring once every 2 years and at least 24 months apart that reveal no new or repeat serious management problems to achieve full correction.	226.25(c)(3)(i) and 226.6(k)(2).	56	39.000	2,184.000	20.000	43,680.000	0.000	43,680.000	43,680.000
State Agencies	SAs must terminate for cause the Program agreement upon declaration of the institution or facility to be seriously deficient.	226.25(d)(1)	56	3.000	168.000	0.250	42.000	42.000	0.000	0.000
State Agencies	SAs must develop a contingency plan in place for the transfer of facilities if a sponsoring organization is terminated or disqualified to ensure that eligible participants continue to have access to meal service.	226.25(d)(2)	56	3.000	168.000	2.000	336.000	0.000	336.000	336.000
State Agencies	If all serious management problems have been corrected and all debts have been repaid, SAs may elect to remove an institution and RPIs from the National Disqualified List, and must submit all requests for early removals to the appropriate FNSRO.	226.25(e)(2)(iii)	56	3.000	168.000	0.250	42.000	0.000	42.000	42.000
State Agencies	SAs must enter into written agreements with FNS, consistent with 5 U.S.C. 552a(o) of the CMA, in order to participate in a matching program involving a FNS Federal system of records.	226.25(e)(3)(ii)	56	1.000	56.000	1.000	56.000	0.000	56.000	56.000
State Agencies	SAs may request FNS to waive the two-step independent verification and notice requirement of the CMA.	226.25(e)(3)(iii)(B)	56	1	56	1	56	0	56	56

State Agencies .....	If the SA or sponsoring organization determines that there is an imminent threat to the health or safety of participants, or that there is a threat to public health or safety, the appropriate State or local licensing and health authorities must immediately be notified and take action that is consistent with the recommendations and requirements of those authorities. The SA or sponsoring organization must initiate action for termination and disqualification. The SA must notify the institution's executive director and chairman of the board of directors that the institution's participation has been suspended and that the SA proposes to terminate the institution's agreement and to disqualify the institution and the RPIs. The notice must identify the RPIs and must be sent to those persons as well. If the SA determines that an institution has knowingly submitted a false or fraudulent claim, the SA must initiate action to suspend the institution's participation and must initiate action to terminate the institution's agreement and initiate action to disqualify the institution and the RPIs. The SA must notify the institution's executive director and chairman of the board of directors that the SA proposes to suspend the institution's participation. At the same time this notice is sent, the SA must add the institution and the RPIs to the State agency list, along with the basis for the suspension and provide a copy of the notice to the appropriate FNSRO.	226.25(f)(1)(i)(A) & 226.25(f)(2)(i)(A).	56	1.000	56.000	0.250	14.000	14.000	0.000	0.000
State Agencies .....	SAs must annually submit administrative review (appeal) procedures to all institutions.	226.25(g) .....	56	390.000	21,840.000	0.017	364.728	364.728	0.000	0.000
State Agencies .....	Each SA must submit administrative review (appeal) procedures when applicable action is taken.	226.25(g)(1)(i) .....	56	5.000	280.000	0.250	70.000	70.000	0.000	0.000
State Agencies .....	SAs must notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review (appeal) of the action.	226.25(g)(1)(iii) .....	56	3.000	168.000	0.250	42.000	42.000	0.000	0.000
State Agencies .....	SAs must submit written documentation to the hearing official prior to the beginning of the hearing, within 30 days after receiving the notice of action.	226.25(g)(1)(iv)(E) ..	56	3.000	168.000	2.000	336.000	336.000	0.000	0.000
State Agencies .....	If a hearing is requested, the sponsor, the responsible principals, and responsible individuals must be provided with at least 5 days advance notice of the time and place of the hearing.	226.25(g)(2) .....	56	3.000	168.000	0.084	14.03	14.030	0.000	0.000
State Agencies .....	Hearing official must hold hearing to determine that the SA followed Program requirements in taking action under appeal.	226.25(g)(2) .....	56	3.000	168.000	4.000	672.000	672.000	0.000	0.000
State Agencies .....	Hearing official must inform the SA, sponsor, responsible principals, and responsible individuals of the decision within 60 days of the date the SA received the appeal request.	226.25(g)(5)(i) and (ii).	56	3.000	168.000	0.500	84.000	84.000	0.000	0.000



ESTIMATED ANNUAL BURDEN FOR CACFP—Continued  
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual burden hours current approved burden hours	Program changes	Total difference in burden
State Agencies	SAs must send a necessary demand letter for the collection of unearned payments, including any assessment of interest, as described in § 226.14(a), and refer the claim to the appropriate State authority for pursuit of the debt payment. SAs must assess interest on institutions' debts established on or after July 29, 2002, based on the Current Value of Funds Rate, which is published annually by Treasury in the Federal Reserve and is available from the FNSRO, and notify the institution that interest will be charged on debts not paid in full within 30 days of the initial demand for remittance up to the date of payment.	226.25(h)(3)(i) .....	56	39,000	2,184,000	0.017	36,473	36,473	0.000	0.000
State Agencies Total .....			56	11,316,821	633,742,000	0.35	223,140,98	2,101.23	221,039.750	221,039.750
Local Government Agencies.	Sponsoring organizations approved to participate in the Program in more than one State must provide: the number of affiliated centers it sponsors, by State; the number of unaffiliated centers it sponsors, by State; the number of day care homes it sponsors, by State; the names, addresses, and phone numbers of the organization's headquarters and the official(s) who have administrative responsibility; the names, addresses, and phone numbers of the financial records center and the official(s) who has financial responsibility; and the organization's decision on whether to use program funds for administrative expenses.	226.6(b)(1)(xix) .....	3	1,000	3,000	0.250	0.750	0.000	0.750	0.750
Local Government Agencies.	Sponsoring organizations must identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the institution or facility's ability to meet Program requirements.	226.25(a)(2)(i) and 226.25(a)(3).	3,257	1,000	3,257,000	1.000	3,257.000	0.000	3,257.000	3,257.000
Local Government Agencies.	Sponsoring organizations must notify the day care home or unaffiliated center that serious management problems have been identified, must be addressed, and corrected. The notice must identify all aspects of the serious management problem; reference specific regulatory citations, instruction, or policies; name all of the RPIs; describe the action needed to correct the serious management problem; and set a deadline for completing the corrective action.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(i).	83	1,000	83,000	0.250	20,750	20,750	0.000	0.000
Local Government Agencies.	If corrective action has been taken to fully correct each serious management problem; sponsoring organizations must notify an institution's executive director and chairman of the board of directors, and RPIs, that the serious management problem has been vacated.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(ii)(A).	3,257	1,000	3,257,000	0.250	814,250	0.000	814,250	814,250

Local Government Agencies.	<p>If corrective action has not fully corrected each serious management problem, sponsoring organizations must notify an institution's executive director and chairman of the board of directors, and RPLs, that the sponsoring organizations proposes to terminate the institution's agreement and disqualify the institution and RPLs. SA must notify the institution of the procedures for seeking a fair hearing in accordance with paragraph g of the proposed termination and proposed disqualifications.</p>	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(ii)(B).	3,257	1,000	3,257,000	0.250	814.250	0.000	814.250	814.250
Local Government Agencies.	<p>If appeal is upheld, sponsoring organizations must notify the institution and facility that confirms the serious management problem is vacated and advise the institution and facility that procedures and policies must be implemented to fully correct the serious management problem. If the fair hearing is denied, sponsoring organizations must notify the institution's executive director and chairman of the board of directors, and RPLs, that the agreement is terminated and declare the institution or facility seriously deficient. Sponsoring organizations must issue a serious deficiency notice that informs the institution, facility, and RPLs of their disqualification from Program participation.</p>	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(iii)(A) and (B).	3,257	1,000	3,257,000	0.250	814.250	0.000	814.250	814.250
Local Government Agencies.	<p>In response to the notice of serious management problems, the institution, unaffiliated center, or day care home must submit, in writing, what corrective actions it has taken to correct each serious management system. The corrective action plan must address the root cause of each serious management problem, describe and document the action taken to correct serious management problems, and describe the action's outcome.</p>	226.25(c)(1) .....	3,257	1,000	3,257,000	0.250	814.250	0.000	814.250	814.250
Local Government Agencies.	<p>Sponsoring organizations must conduct reviews, as described in §226.16(d)(4) to confirm that the serious management problem(s) is corrected. A follow-up review must be conducted to confirm that the serious management problem is corrected. Full reviews occurring 3 times a year, as described in §226.16(d)(4). Full correction is achieved when three consecutive reviews indicate no new serious management problems or no new repeat serious management problem(s).</p>	226.25(c)(3)(ii) .....	3,257	1,000	3,257,000	20.000	65,140.000	0.000	65,140.000	65,140.000
Local Government Agencies.	<p>Sponsoring organizations must terminate for cause the Program agreement upon declaration of the institution or facility to be seriously deficient.</p>	226.25(d)(1) .....	3,257	1,000	3,257,000	0.250	814.250	0.000	814.250	814.250

ESTIMATED ANNUAL BURDEN FOR CACFP—Continued  
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual burden hours current approved burden hours	Program changes	Total difference in burden
Local Government Agencies.	If the sponsoring organization determines that there is an imminent threat to the health or safety of participants, or that there is a threat to public health or safety, the appropriate State or local licensing and health authorities must immediately be notified and take action that is consistent with the recommendations and requirements of those authorities. The sponsoring organization must initiate action for termination and disqualification. The sponsoring organization must submit a combined notice of suspension, proposed termination, and proposed disqualification to the day care home provider or unaffiliated center and the RPIs. The notice must identify the RPIs and must be sent to those persons as well. If the sponsoring organization determines that a day care home or unaffiliated center has knowingly submitted a false or fraudulent claim, the sponsoring organization must initiate action to suspend the day care home or unaffiliated center's participation and must initiate action to terminate the day care home or unaffiliated center's agreement and initiate action to disqualify the institution and the RPIs. The SA must submit a combined notice of suspension, proposed termination, and proposed disqualification to the day care home provider or unaffiliated center and the RPIs. At the same time this notice is sent, the SA must add the day care home or unaffiliated center and the RPIs to the State agency list, along with the basis for the suspension and provide a copy of the notice to the appropriate FNSRO.	226.25(f)(1)(ii)(A) & 226.25(f)(2)(ii)(A).	814	1.000	814.000	0.250	203.500	203.500	0.000	0.000
Local Government Agencies Total			3,257	7.276	23,699.00	3.067	72,693.250	224,250	72,469.000	72,469.000
State/Local/Tribal Governments Total			3,313	198.443	657,441.000	0.450	295,834.23	2,325.48	293,508.750	293,508.750
Institutions	Sponsoring organizations approved to participate in the Program in more than one State must provide: the number of affiliated centers it sponsors, by State; the number of unaffiliated centers it sponsors, by State; the number of day care homes it sponsors, by State; the names, addresses, and phone numbers of the organization's headquarters and the official(s) who have administrative responsibility; the names, addresses, and phone numbers of the financial records center and the official(s) who has financial responsibility; and the organization's decision on whether to use program funds for administrative expenses.	226.6(b)(1)(xix)	1,116	1.000	1,116.000	0.250	279.000	0.000	279.000	279.000



ESTIMATED ANNUAL BURDEN FOR CACFP—Continued  
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual burden hours current approved burden hours	Program changes	Total difference in burden
Institutions .....	Sponsoring organizations must notify a day care home or unaffiliated center that serious management problems have been identified, must be addressed, and corrected. The notice must identify all aspects of the serious management problem; reference specific regulatory citations, instruction, or policies; name all of the RPIs; describe the action needed to correct the serious management problem; and set a deadline for completing the corrective action.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(i).	540	1.000	540.000	0.250	135.000	135.000	0.000	0.000
Institutions .....	If corrective action has been taken to fully correct each serious management problem, sponsoring organizations must notify the day care home or unaffiliated center that the serious management problem has been vacated.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(ii)(A).	18,601	1.000	18,601.000	0.250	4,650.250	0.000	4,650.250	4,650.250
Institutions .....	If corrective action has not fully corrected each serious management problem, sponsoring organizations must notify the day care home or unaffiliated center that the sponsoring organizations proposes to terminate the institution's agreement and disqualify the institution and RPIs. SA must notify the institution of the procedures for seeking a fair hearing in accordance with paragraph g of the proposed termination and proposed disqualifications.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(ii)(B).	18,601	1.000	18,601.000	0.250	4,650.250	0.000	4,650.250	4,650.250
Institutions .....	If appeal is upheld, sponsoring organizations must notify the day care home or unaffiliated center that confirms the serious management problem is vacated and advise the institution and facility that procedures and policies must be implemented to fully correct the serious management problem.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(iii)(A).	18,601	1.000	18,601.000	0.250	4,650.250	0.000	4,650.250	4,650.250
Institutions .....	If the fair hearing is denied, sponsoring organizations must notify the day care home or unaffiliated center that the agreement is terminated and declare the institution or facility seriously deficient. Sponsoring organizations must issue a serious deficiency notice that informs the institution, facility, and RPIs of their disqualification from Program participation.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(iii)(B).	18,601	1.000	18,601.000	0.250	4,650.250	0.000	4,650.250	4,650.250
Institutions .....	In response to the notice of serious management problems, the institution, unaffiliated center, or day care home must submit, in writing, what corrective actions it has taken to correct each serious management system. The corrective action plan must address the root cause of each serious management problem, describe and document the action taken to correct serious management problems, and describe the action's outcome.	226.25(c)(1) .....	18,601	1.000	18,601.000	0.250	4,650.250	0.000	4,650.250	4,650.250

Institutions .....	Sponsoring organizations must conduct reviews that assess whether the facility has corrected the serious management problems, as described in §226.16(d)(4). Follow-up reviews must be conducted to confirm that the serious management problem is corrected. A day care home or unaffiliated center must be reviewed at the same frequency as described in §226.16(d)(4). Full correction is achieved when three consecutive reviews indicate no new serious management problems or no repeat of a serious management problem.	226.25(c)(3)(ii) .....	18,601	1,000	18,601.000	20.000	372,020.000	0.000	372,020.000	372,020.000
Institutions .....	Sponsoring organizations must terminate for cause the Program agreement upon declaration of the institution or facility to be seriously deficient.	226.25(d)(1) .....	18,601	1,000	18,601.000	0.250	4,650.250	0.000	4,650.250	4,650.250
Institutions .....	If the sponsoring organization determines that there is an imminent threat to the health or safety of participants, or that there is a threat to public health or safety, the appropriate State or local licensing and health authorities must immediately be notified and take action that is consistent with the recommendations and requirements of those authorities. The sponsoring organization must initiate action for termination and disqualification. The sponsoring organization must notify the day care home provider or unaffiliated center's principals that the day care home or unaffiliated center's participation has been suspended and that the SA proposes to terminate the day care home or unaffiliated center's agreement and to disqualify the day care home or unaffiliated center and the RPIs. The notice must identify the RPIs and must be sent to those persons as well. If the sponsoring organization determines that an day care home or unaffiliated center has knowingly submitted a false or fraudulent claim, the sponsoring organization must initiate action to suspend the day care home or unaffiliated center's participation and must initiate action to terminate the day care home or unaffiliated center's agreement and initiate action to disqualify the institution and the RPIs. The SA must notify the day care home provider or unaffiliated center's principals that the sponsoring organization proposes to suspend the day care home or unaffiliated center's participation. At the same time this notice is sent, the SA must add the day care home or unaffiliated center and the RPIs to the State agency list, along with the basis for the suspension and provide a copy of the notice to the appropriate FNSRO.	226.25(f)(1)(ii)(A) & 226.25(f)(2)(ii)(A).	4,650	1,000	4,650.000	0.250	1,162.500	1,162.500	1,162.500	0.000
Institutions Total .....			41,136	5,107	240,721,886	1.83	441,500.97	1,297.500	440,203.47	440,203.47
Facilities .....	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. The sponsoring organization may terminate this agreement for cause as described in §226.25(a).	226.17(e) .....	21,692	1,000	21,692	0.250	5,423.124	0.000	5,423.124	5,423.124

ESTIMATED ANNUAL BURDEN FOR CACFP—Continued  
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual burden hours current approved burden hours	Program changes	Total difference in burden
Facilities .....	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. The SA may terminate this agreement for cause as described in §226.25(a). Unaffiliated sponsored afterschool 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 applicable provisions set forth in this section. The sponsoring organization may terminate this agreement for cause as described in §226.25(a).	226.17(f) .....	6,843	1.000	6,843	0.250	1,710.867	0.000	1,710.867	1,710.867
Facilities .....	Unaffiliated sponsored afterschool 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 applicable provisions set forth in this section. The sponsoring organization may terminate this agreement for cause as described in §226.25(a).	226.17a(f)(2)(i) .....	21,692	1.000	21,692	0.250	5,423.124	0.000	5,423.124	5,423.124
Facilities .....	Independent afterschool child care centers must enter into a written permanent agreement with the SA. 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. The SA may terminate this agreement for cause as described in §226.25(a).	226.17a(f)(2)(ii) .....	6,843	1.000	6,843	0.250	1,710.867	0.000	1,710.867	1,710.867
Facilities .....	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. The sponsoring organization may terminate this agreement for cause as described in §226.25(a).	226.19(d) .....	21,692	1.000	21,692	0.250	5,423.124	0.000	5,423.124	5,423.124
Facilities .....	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) of this section. The sponsoring organization may terminate this agreement for cause as described in §226.25(a).	226.19a(d) .....	6,843	1.000	6,843	0.250	1,710.867	0.000	1,710.867	1,710.867
Facilities Total .....			28,535	3.000	85,607.886	0.250	21,401.97	0.000	21,401.97	21,401.972
Business Total .....			75,671	4.312	326,329.772	1.42	462,902.94	1,297.500	461,605.44	461,605.44
Reporting Total .....			78,984	12.455	983,770.772	0.77	758,737.17	3,622.98	755,114.19	755,114.19

State Agencies .....	SAs must collect and maintain on file CACFP agreements (Federal/State and State/Institutions), records received from applicant and participating institutions, National Disqualified List/State Agency Lists, and documentation of administrative review (appeals) and Program assistance activities, re-sults, and corrective actions.	226.25(b)/FNS-843 & FNS-844.	56	5.000	280.000	5.000	1,400.000	1,400.000	0.000	0.000
State Agencies .....	SAs must collect and maintain on file corrective action plans submitted by institutions, unaffiliated centers, or day care homes, in writing, what corrective actions have been taken to correct each serious management problem.	226.25(c) .....	56	3.000	168.000	1.500	252.000	0.000	252.000	252.000
State Agencies Total .....			56	8.000	448.000	3.688	1,652.000	1,400.000	252.000	252.000
State/Local/Tribal Governments Total .....			56	8.000	448.000	3.688	1,652.000	1,400.000	252.000	252.000
Recordkeeping Total .....			56	8.000	448.000	3.688	1,652.000	1,400.000	252.000	252.000
State Agencies .....	The CSA must conduct a full review at the MSSO headquarters and financial records center. The CSA must coordinate the timing of the reviews and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO.	226.6(q)(2)(iii) .....	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State Agencies Total .....			56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State/Local/Tribal Governments Total .....			56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
Public Disclosure Total .....			56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
Total Burden .....			79,040	12,468	985,507.772	0,772	760,711.172	5,022.981	755,688.190	755,688.190



**SUMMARY OF BURDEN**  
[OMB #0584–0055]

Total No. Respondents .....	3,852,077
Average No. Responses per Respondent .....	4.456
Total Annual Responses .....	17,165,505
Average Hours per Response ..	0.289
Total Burden Hours .....	4,968,899
Current OMB Approved Burden Hours .....	4,213,211
Adjustments .....	0
Program Changes .....	755,688
Total Difference in Burden .....	755,688

*Title:* Child and Adult Care Food Program (CACFP) National Disqualified List.

*Form Number:* FNS–843 & FNS–844.

*OMB Control Number:* 0584–0584.

*Expiration Date:* 09/30/2026.

*Type of Request:* Revision.

*Abstract:* This is a revision of requirements in the information collection under OMB Control Number 0584–0584 that are being impacted by this rulemaking. USDA proposes to extend the serious deficiency process to the SFSP. As such, this proposed rule impacts reporting requirements for State agencies. No new recordkeeping requirements will be added to this

collection, as the recordkeeping burden associated with the FNS–843 and FNS–844 forms are being captured under requirements in the information collections under OMB Control Numbers 0584–0280 and 0584–0055.

This rulemaking will protect program integrity by extending the serious deficiency process to the SFSP. By extending the rulemaking, State agencies will create, update, and maintain data that will be reported to the National Disqualified List, ensuring that sponsors and responsible principals and individuals declared seriously deficient and disqualified from participation are prevented from re-entering the program under sponsors or participating in another program.

The burden for complying with the proposed reporting requirements at 225.18(e)(2)(i)), for the 53 SFSP State agencies, is estimated at 239 hours annually (for 106 FNS–843 responses per State agency, 371 FNS–844 responses per State agency, and 30 minutes (0.5 hours) each to complete the necessary forms). Overall, the burden associated with meeting the proposed reporting requirements are

expected to increase burden hours, responses, and respondents, from 784 hours to an estimated 1,023 hours, from 1,568 responses to an estimated 2,045 responses annually, and from 56 respondents to an estimated 109 respondents, due to the proposed rule. The increase of 239 hours, 477 responses, and 53 respondents is due to a program change by incorporating the SFSP into the National Disqualified List. The average burden per response and the annual burden hours for reporting are explained below and summarized in the charts which follow.

**Reporting**

*Respondents (Affected Public):* State, Local, and Tribal Government. The respondent group identified include State agencies which handle the SFSP.

*Estimated Number of Respondents:* 53.

*Estimated Number of Responses per Respondent:* 9.

*Estimated Total Annual Responses:* 477.

*Estimated Time per Response:* 0.50.

*Estimate Total Annual Burden on Respondents:* 239.

**NATIONAL DISQUALIFIED LIST (NDL) ICR**  
[OMB Control Number 0584–0584]

Respondent type	Burden activities	Section	Forms	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Current OMB approved burden hours	Program changes	Total difference in burden
State Agency	The State agency creates updates, and maintains a list of sponsoring organizations who have been terminated or otherwise disqualified from SFSP participation.	225.18(e)(2)(i)	FNS–843*	53	2	106	0.50	53	0	53	53
State agency Level Reporting Totals.			FNS–844*	53	7	371	0.50	185.5	0	185.5	185.5
				53	9	477	0.50	238.5	0	238.5	238.5

**SUMMARY OF BURDEN**  
[OMB Control Number 0584–0584]

Total No. Respondents .....	109
Average No. Responses per Respondent .....	18.76
Total Annual Responses .....	2,045
Average Hours per Response ..	0.50
Total Burden Hours .....	1,023
Current OMB Approved Burden Hours .....	784
Adjustments .....	0
Program Changes .....	239
Total Difference in Burden .....	239

**J. E-Government Act Compliance**

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

**List of Subjects**

**7 CFR Part 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.

For the reasons stated in the preamble, Food and Nutrition Services proposes to amend 7 CFR parts 210, 215, 220, 225, and 226 as set forth below:

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. In § 210.2, add in alphabetical order the definition for “Good standing” to read as follows:

§ 210.2 Definitions.

\* \* \* \* \*

Good standing means a school food authority or school that meets its program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time.

\* \* \* \* \*

■ 3. In § 210.9, add paragraph (d) to read as follows:

§ 210.9 Agreement with State agency.

\* \* \* \* \*

(d) Terminations or disqualifications. (1) The State agency is prohibited from approving any school food authority or school to administer or participate in the Program if the school food authority, school, responsible principals, or responsible individuals:

(i) Have been terminated for cause from any program authorized under this part or parts 215, 220, 225, and 226 of this chapter; and

(ii) Are currently included on a National Disqualified List described in § 225.18(e)(2) and § 226.25(e)(2).

(2) State agencies must ensure that school food authorities, schools, responsible principals, or responsible individuals described in paragraph (d)(1) of this section do not administer or participate in the Program until the State agency, in consultation with FNS, determines that each deficiency has been corrected, or until 7 years have elapsed since disqualification. However, the school food authority, school, responsible principals, or responsible individuals will remain ineligible until all debts owed to the Program have been repaid.

(3) If school food authorities or schools currently administering or participating in the Program meet the criteria described in paragraph (d)(1) of this section, the State agency must terminate the Program agreement in accordance with the procedures set forth in § 210.25.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

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

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

■ 5. In § 215.2, add in alphabetical order the definition for “Good standing” to read as follows:

§ 215.2 Definitions.

\* \* \* \* \*

Good standing means a school food authority or school that meets its program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time.

\* \* \* \* \*

■ 6. In § 215.7, add paragraph (g) to read as follows:

§ 215.7 Requirements for participation.

\* \* \* \* \*

(g) Terminations or disqualifications. (1) The State agency is prohibited from approving any school food authority or school to administer or participate in the Program if the school food authority, school, responsible principals, or responsible individuals:

(i) Have been terminated for cause from any program authorized under this part or parts 210, 220, 225, and 226 of this chapter; and

(ii) Are currently included on a National Disqualified List described in § 225.18(e)(2) and § 226.25(e)(2).

(2) State agencies must ensure that school food authorities, schools, responsible principals, or responsible

individuals described in paragraph (g)(1) of this section do not administer or participate in the Program until the State agency, in consultation with FNS, determines that each deficiency has been corrected, or until 7 years have elapsed since disqualification. However, the school food authority, school, responsible principals, or responsible individuals will remain ineligible until all debts owed to the Program have been repaid.

(3) If school food authorities or schools currently administering or participating in the Program meet the criteria described in paragraph (g)(1) of this section, the State agency must terminate the Program agreement in accordance with the procedures set forth in § 215.16.

PART 220—SCHOOL BREAKFAST PROGRAM

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

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

■ 8. In § 220.2, add in alphabetical order the definition for “Good standing” to read as follows:

§ 220.2 Definitions.

\* \* \* \* \*

Good standing means a school food authority or school that meets its program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time.

\* \* \* \* \*

■ 9. In § 220.7, add paragraph (i) to read as follows:

§ 220.7 Requirements for participation.

\* \* \* \* \*

(i) Terminations or disqualifications. (1) The State agency is prohibited from approving any school food authority or school to administer or participate in the Program if the school food authority, school, responsible principals, or responsible individuals:

(i) Have been terminated for cause from any program authorized under this part or parts 210, 215, 225, and 226 of this chapter; and

(ii) Are currently included on a National Disqualified List described in § 225.18(e)(2) and § 226.25(e)(2).

(2) State agencies must ensure that school food authorities, schools, responsible principals, or responsible individuals described in paragraph (i)(1) of this section do not administer or participate in the Program until the State agency, in consultation with FNS, determines that each deficiency has

been corrected, or until 7 years have elapsed since disqualification. However, the school food authority, school, responsible principals, or responsible individuals will remain ineligible until all debts owed to the Program have been repaid.

(3) If school food authorities or schools currently administering or participating in the Program meet the criteria described in paragraph (i)(1) of this section, the State agency must terminate the Program agreement in accordance with the procedures set forth in § 220.19.

**PART 225—SUMMER FOOD SERVICE PROGRAM**

■ 10. The authority citation for 7 CFR 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).

■ 11. In § 225.2, add in alphabetical order the definitions for “Cognizant Regional office”, “Cognizant State agency”, “Contingency plan”, “Corrective action”, “Disqualified”, “Fair hearing”, “Finding”, “Fiscal action”, “Full correction”, “Hearing official”, “Lack of business integrity”, “Legal basis”, “Multi-State sponsoring organization (MSSO)”, “National Disqualified List (NDL)”, “Notice”, “Principal”, “Program operator”, “Responsible individual”, “Responsible principal”, “Review cycle”, “Seriously deficient”, “Serious management problem”, “State agency list”, and “Termination for cause” to read as follows:

**§ 225.2 Definitions**

\* \* \* \* \*

*Cognizant Regional office* means the FNSRO which acts on behalf of the Department in the administration of the Program and is responsible for determining which State agency has cognizance when a multi-State sponsoring organization operates the Program.

*Cognizant State agency (CSA)* means the agency which is responsible for the administration of the Program in the State where a multi-State sponsoring organization’s headquarters is located.

\* \* \* \* \*

*Contingency plan* means the State agency’s written process for the transfer of sponsored site service area that will help ensure that Program meals for children will continue to be available without interruption if a sponsor’s agreement is terminated.

\* \* \* \* \*

*Corrective action* means implementation of a solution, written in

a corrective action plan, to address the root cause and prevent the recurrence of a serious management problem.

\* \* \* \* \*

*Disqualified* means the status of a sponsor, responsible principal, or responsible individual who is ineligible for participation in the Program.

\* \* \* \* \*

*Fair hearing* means due process provided upon request to:

(1) A sponsor that has been given notice by the State agency of an action that will affect participation or reimbursement under the Program;

(2) A principal or individual responsible for a sponsor’s serious management problems and issued a notice of proposed termination and proposed disqualification from Program participation; or

(3) a sponsor that has been given notice of proposed termination.

\* \* \* \* \*

*Finding* means a violation of a regulatory requirement identified during a review.

*Fiscal action* means the recovery of an overpayment or claim for reimbursement that is not properly payable through direct assessment of future claims, offset of future claims, disallowance of overclaims, submission of a revised claim for reimbursement, disallowance of funds for failure to take corrective action to meet Program requirements.

\* \* \* \* \*

*Full correction* means the status achieved after a corrective action plan is accepted and approved, all corrective actions are fully implemented, and no new or repeat serious management problems are identified in subsequent reviews, as described § 225.18(c)(3).

\* \* \* \* \*

*Hearing official* means an individual who is responsible for conducting an impartial and fair hearing—as requested by a sponsor, responsible principal, or responsible individual responding to a proposal for termination—and rendering a decision.

\* \* \* \* \*

*Lack of business integrity* means the conviction or concealment of a conviction for fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice.

*Legal basis* means the lawful authority established in statute or regulation.

\* \* \* \* \*

*Multi-State sponsoring organization (MSSO)* means a sponsor that sponsors sites in more than one State.

*National Disqualified List (NDL)* means a system of records, maintained by the Department, of sponsors, responsible principals, and responsible individuals disqualified from participation in the Program.

\* \* \* \* \*

*Notice* means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a State agency or FNS with regard to a sponsor’s Program reimbursement or participation.

\* \* \* \* \*

*Principal* means any individual who holds a management position within, or is an officer of, a sponsor or a sponsored site, including all members of the sponsor’s board of directors or the sponsored site’s board of directors.

\* \* \* \* \*

*Program operator* means any entity that participates in one or more child nutrition programs.

\* \* \* \* \*

*Responsible individual* means any individual employed by, or under contract with a sponsor or an individual, including uncompensated individuals, who the State agency or FNS determines to be responsible for a sponsor’s serious management problems.

*Responsible principal* means any principal, as described in this section, who the State agency or FNS determines to be responsible for a sponsor’s serious management problems.

\* \* \* \* \*

*Review cycle* means the frequency and number of required reviews of sponsors and sites.

\* \* \* \* \*

*Seriously deficient* means the status of a sponsor after it is determined that full correction has not been achieved and termination for cause is the only appropriate course of action.

*Serious management problem* means the finding(s) that relate to a sponsor’s inability to meet the Program’s performance standards or that affect the integrity of a claim for reimbursement or the quality of meals served at a site.

\* \* \* \* \*

*State agency list* means an actual paper or electronic list, or the retrievable paper records, maintained by the State agency, that includes information on sponsors through the serious deficiency process in that State. The list must be made available to FNS upon request, and must include information specified in § 225.18(b).

\* \* \* \* \*

*Termination for cause* means the termination of a Program agreement due

to considerations related to a sponsor's performance of Program responsibilities under the agreement between the State agency and sponsor.

\* \* \* \* \*

■ 12. In § 225.6:

■ a. Revise paragraph (b)(9);

■ b. Add paragraph (b)(13);

■ c. In paragraph (c)(2), remove the words "significant operational" and add in their place the words "serious management";

■ d. Add paragraph (c)(5);

■ e. In paragraph (e), remove the words "significant operational" and add in their place the words "serious management", wherever they appear; and

■ f. Add paragraph (n).

The revisions and additions read as follows:

**§ 225.6 State agency responsibilities.**

\* \* \* \* \*

(b) \* \* \*

(9) The State agency must not approve the application of any applicant sponsor identifiable through its organization or principals as a sponsor which has been determined to be seriously deficient as described in § 225.18(d). However, the State agency may approve the application of a sponsor, not on the NDL, which has been previously disapproved if the applicant demonstrates to the satisfaction of the State agency that it has taken appropriate corrective actions to prevent recurrence of serious management problems.

\* \* \* \* \*

(13) *Terminations or disqualifications.* (i) The State agency is prohibited from approving any sponsor or site to administer or participate in the Program if the sponsor, site, responsible principals, or responsible individuals:

(A) Have been terminated for cause from any Program authorized under this part or parts 210, 215, 220, or 226 of this chapter; and

(B) Are currently included on a National Disqualified List described in § 225.18(e)(2).

(ii) State agencies must ensure that sponsors, sites, responsible principals, or responsible individuals described in paragraph (b)(13)(i) of this section do not administer or participate in the Program until the State agency, in consultation with FNS, determines that each serious management problem has been corrected, or until 7 years have elapsed since disqualification. However, a sponsor, site, responsible principals, or responsible individuals will remain ineligible until all debts owed to the Program have been repaid.

(iii) If sponsors or sites currently administering or participating in the Program meet the criteria described in paragraph (b)(13)(i) of this section, the State agency must terminate the Program agreement in accordance with the procedures set forth in § 225.18(d).

(c) \* \* \*

(5) *Information about MSSO*

*operations.* The State agency must also determine if the sponsor operates in more than one State. Each sponsor that is approved to operate the Program in more than one State must provide:

(i) The number of affiliated sites it operates, by State;

(ii) The number of unaffiliated sites it operates;

(iii) The names, addresses, and phone numbers of the organization's headquarters and the officials who have administrative responsibility; and

(iv) The names, addresses, and phone numbers of the financial records center and the officials who have financial responsibility.

\* \* \* \* \*

(n) *Oversight of MSSOs.* An MSSO may include a sponsor that administers the Program in more than one State, a franchise operating multiple facilities in more than one State, or a for-profit organization whose parent corporation operates multiple affiliated centers in more than one State. Each State agency must determine if a sponsoring organization is an MSSO, as described in paragraph (c)(5) in this section. The State agency must assume the role of the CSA, if the MSSO's center of operations is located within the State. Each State agency that approves an MSSO must follow the requirements described in paragraph (n)(1) of this section. The CSA must follow the requirements described in paragraph (n)(2) of this section.

(1) *State agency responsibilities.* If a State agency determines that an MSSO operates the Program within the State, it must:

(i) Enter into a permanent written agreement with the MSSO, as described in paragraph (n)(1) of this section.

(ii) Approve the MSSO's administrative budget (in consultation with the CSA, as appropriate).

(A) The State agency must approve budget line items that are directly attributable to operations within the State.

(B) The State agency must approve its portion of costs that are shared among other State agencies and costs that attribute directly to program operations within the State.

(C) The State agency must notify the CSA if it has determined that the ratio

of administrative to operating costs is high or that the net cash resources of an MSSO's nonprofit food service exceed the limits that are described in § 225.7(m)

(iii) Conduct monitoring of MSSO Program operations within the State, as described in paragraph (k)(4) of this section. The State agency should coordinate monitoring with the CSA to streamline reviews and minimize duplication of the review content. The State agency may base the review cycle on the number of facilities operating within the State.

(A) The State agency may use information from the CSA's technical assistance activities to assess compliance in areas where the scope of review overlaps during the same review cycle. The State agency may choose to conduct a review of implementation of additional State agency requirements, financial records to support State-specific administrative costs, and other areas of compliance that the CSA would not have reviewed.

(B) The State agency may also choose to conduct a full review at the MSSO's headquarters and financial records center. If the State agency chooses to conduct a full review, the State agency should request the necessary records from the CSA.

(C) The State agency must provide summaries of the MSSO reviews that are conducted to the CSA. The summaries must include the prescribed corrective actions and follow-up efforts.

(iv) Conduct audit resolution activities. The State agency must review audit reports, address audit findings, and implement corrective actions, as required under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415.

(v) Notify all other State agencies that have agreements with the MSSO of termination and disqualification actions, as described in paragraph (c)(2)(i) of this section.

(2) *CSA responsibilities.* If it determines that an MSSO's center of operations is located within the State, the State agency must assume the role of the CSA, which must:

(i) Comply with the requirements for a State agency that has approved an MSSO to provide Program operations within the State, as described in this paragraph (n)(1).

(ii) Determine if there will be shared administrative costs among the States in which the MSSO operates and how the costs will be allocated. The CSA has the authority to approve cost levels for cost items that must be allocated. The CSA must approve the allocation method that the MSSO uses for shared costs. The

method must allocate the cost based on the benefits received, not the source of funds available to pay for the cost. If the MSSO administers the Program in centers, the CSA must also ensure that administrative costs do not exceed 15 percent on an organization-wide basis.

(iii) Coordinate monitoring. The CSA must conduct a full review at the MSSO headquarters and financial records center. The CSA must coordinate the timing of its reviews. The CSA must make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO.

(iv) Ensure that organization-wide audit requirements are met. Each MSSO must comply with audit requirements, as described under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415. Since their operations are often large and complex, MSSOs should have annual audits. If an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements.

(v) Oversee audit funding and costs. The share of organization-wide audit costs may be based on a percentage of each State's expenditure of CACFP funds and the MSSO's expenditure of Federal and non-Federal funds during the audited fiscal year. The CSA should review audit costs as part of the overall budget review and make audit reports available to the other State agencies that have agreements with the MSSO.

(vi) Ensure compliance with procurement requirements. Procurement actions involving MSSOs must follow the requirements under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415. If the procurement action benefits all States in which the MSSO operates, the procurement standards of the State that are the most restrictive apply. If the procurement action only benefits a single State's Program, the procurement standards of that State agency apply.

\* \* \* \* \*

**§ 225.7 [Amended]**

■ 13. In § 225.7:

■ a. In paragraph (e)(4)(ii), remove the words "significant operational" and add in their place the words "serious management"; and

■ b. In paragraph (k), remove the citation "§ 225.11" and add in its place the citations "§§ 225.11 and 225.18".

■ 14. In § 225.11, revise paragraph (c) introductory text to read as follows:

**§ 225.11 Corrective action procedures.**

\* \* \* \* \*

(c) *Denial of applications and termination of sponsors.* Except as specified in § 225.6(b)(9), the State agency shall not enter into an agreement with any applicant sponsor identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program and was seriously deficient in its operation of any such program. The State agency shall terminate the Program agreement with any sponsor which is determined to be seriously deficient. However, the State agency shall afford a sponsor reasonable opportunity to correct serious management problems before terminating the sponsor and declaring them seriously deficient. State agencies may approve the application of a sponsor in accordance with § 225.6(b)(9). Uncorrected serious management problems which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

\* \* \* \* \*

■ 15. Revise § 225.13 to read as follows:

**§ 225.13 Fair hearing procedures.**

(a) Each State agency must establish a procedure to be followed by an applicant appealing:

(1) A denial of an application for participation (except if the applicant has failed to complete a corrective action plan from the previous year);

(2) A denial of a sponsor's request for an advance payment;

(3) A denial of a sponsor's claim for reimbursement (except for late submission under § 225.9(d)(6));

(4) A State agency's refusal to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim;

(5) A claim against a sponsor for remittance of a payment;

(6) The termination of the sponsor or a site;

(7) The termination of a sponsor's agreement;

(8) A denial of a sponsor's application for a site;

(9) A denial of a food service management company's application for registration, if applicable;

(10) The revocation of a food service management company's registration, if applicable; or

(11) Any other action of the State agency affecting a sponsor's participation or its claim for reimbursement.

(b) If after a fair hearing, an entity or individual is denied participation based on the National Disqualified List, their right to appeal the application denial is

solely granted to contest the accuracy of the information on the National Disqualified List or the match to the National Disqualified List.

(c) Appeals must not be allowed on decisions made by FNS with respect to late claims or upward adjustments under § 225.9(d)(6).

(d) When a sponsor or a food service management company requests a fair hearing, the State agency must follow the procedures described in § 225.18(f).

**§§ 225.18 through 225.20 [Redesignated as §§ 225.19 through 225.21]**

■ 16. Redesignate §§ 225.18 through 225.20 as §§ 225.19 through 225.21, respectively.

■ 17. Add new section § 225.18 to read as follows:

**§ 225.18 Administrative actions to address serious management problems.**

(a) *Serious management problems.* (1) *General.* State agencies must follow the procedures outlined in this section to address any serious management problems. The State agency must provide the sponsor an opportunity for corrective action and due process.

(2) *Six steps.* The serious deficiency process includes a standard set of procedures that State agencies follow to address serious management problems in the operation of the Program. These procedures apply to serious management problems in new or experienced sponsors. The State agency must:

(i) Identify serious management problems.

(ii) Issue a notice of serious management problems.

(iii) Receive and assess corrective action.

(iv) Issue a notice of successful corrective action or a notice of proposed termination with appeal rights.

(v) Provide a fair hearing, if requested.

(vi) Issue a notice of successful appeal if the fair hearing vacates the proposed termination, or issue a notice of termination, serious deficiency, and disqualification, if the fair hearing upholds the proposed termination or the timeframe for requesting a fair hearing has passed.

(3) *Identifying serious management problems.* State agencies must consider the type and magnitude of the finding(s) to determine whether it rises to the level of a serious management problem. State agencies should define a set of standards to identify serious management problems. At a minimum, to identify serious management problems, State agencies and must consider:

(i) *The severity of the problem.* Is the finding minor or substantial? Is the finding systemic or isolated?

(ii) *The degree of responsibility.* Is the finding best described as an inadvertent error or is there evidence of negligence or conscious indifference to regulatory requirements, or even deception? Is the finding at the site level or the sponsor level? If it is at the sponsor level, has the State agency taken appropriate steps to resolve it through monitoring, training, and technical assistance? If it is at the site level, has the sponsor taken the appropriate steps to resolve it through monitoring, training, and technical assistance?

(iii) *The history of participation in the Program.* Is this the first instance or is there a history of frequently recurring Program findings or serious management problems at the same sponsor?

(iv) *The nature of requirements that relate to the finding.* Is the action a clear finding of Program requirements or a simple mistake? Are new policies incorporated correctly?

(v) *The degree to which the problem impacts Program integrity.* Does the finding undermine the intent of the Program? Is the finding administrative or does it impact viability, capability or accountability? Is the finding at the sponsor level or the site level? If it is at the sponsor level, has the State agency taken appropriate steps to resolve it through monitoring, training, and technical assistance? If it is at the site level, has the sponsor taken the appropriate steps to resolve it through monitoring, training, and technical assistance?

(4) *Good standing.* If a State agency identifies a serious management problem, the institution, day care home or unaffiliated center is considered to be not in good standing. At a minimum, the following criteria need to be met to return to good standing.

- (i) Outstanding debts are paid;
- (ii) All corrective actions are fully implemented; and
- (iii) Meets its Program responsibilities.

(5) *Notifications.* The State agency must provide a written notice of action through each step of the serious deficiency process.

(i) Each type of notice must include a basis and an explanation of any action that is proposed and any action that is taken.

(ii) The notice must be delivered via certified mail, return receipt, or an equivalent private delivery service, facsimile, or email.

(iii) The notice is considered to be received on the date it is delivered, sent by facsimile, or sent by email.

(iv) If the notice is undeliverable, it is considered to be received 5 days after it is sent to the addressee's last known mailing address, facsimile number, or email address.

(6) *Serious management problems notification procedures for sponsors.* If the State agency determines that the sponsor has serious management problems, the sponsor must use the following procedures. The State agency must notify the sponsor of all findings, including those that do not rise to a serious management problem, and they must be corrected.

(i) *First notification—notice of serious management problems.* The State agency must notify the sponsor's executive director, chair of the board of directors that the sponsor has serious management problems and provide an opportunity to take corrective action. The notice must also be sent to all other responsible principal, other responsible individual. At the same time the notice is issued, the State agency must add the sponsor to the State agency list, as described in paragraph (b) of this section and provide a copy of the notice to the FNSRO. This notice documents that a serious management problem must be addressed and corrected.

Prompt action must be taken to minimize the time that elapses between the identification of a serious management problem and the issuance of the notice. For each serious management problem, the notice must:

- (A) Specify the serious management problem;
- (B) Cite the specific regulatory requirements, instructions, or policies as the basis for the serious management problems;
- (C) Identify the responsible principals and responsible individuals;

(D) Specify the actions that must be taken to correct the serious management problem. The notice may specify different corrective actions and time periods for completing the corrective action for the institution and the responsible principal and the responsible individual;

(E) Set time allotted for implementing the corrective action. The corrective action must include milestones and a definite completion date that will be monitored. Although paragraph (c)(2) of this section sets maximum timeframes, shorter timeframes for corrective action may be established.

(F) Specify that failure to fully implement corrective actions for each serious management problem within the allotted time will result in the State

agency's proposed termination of the sponsor's agreement and the proposed disqualification of the sponsor and the responsible principals and responsible individuals;

(G) Clearly state that, if the sponsor voluntarily terminates its agreement with the State agency after having been notified of serious management problems it will still result in the sponsor's agreement being terminated for cause and the placement of the sponsor and its responsible principals and responsible individuals on the National Disqualified List;

(H) Submission of the date of birth for any individual named as a responsible principal or responsible individual in the notice of serious management problems is a condition of corrective action for the sponsor and/or responsible principal or responsible individual.

(I) The serious management problems are not subject to a fair hearing.

(ii) *Second notification—notice of successful corrective action or notice of proposed termination, proposed disqualification.* (A) *Notice of successful corrective action.* If corrective action has been implemented to correct each serious management problem within the time allotted and to the State agency's satisfaction, the State agency must:

(1) Notify the executive director, chair of the board of directors, owner, responsible principals, and responsible individuals, that corrective actions are fully implemented.

(2) If corrective action is complete for the sponsor, but not for all of the responsible principals and responsible individuals (or vice versa), the State agency must continue with actions, in accordance with paragraph (a)(6)(ii)(B) of this section against the remaining parties.

(3) At the same time the notice is issued, the State agency must also update the State agency list, as described in paragraph (b) of this section and provide a copy of the notice to the appropriate FNSRO.

(4) Ensure the sponsor continues to implement procedures and policies to fully correct the serious management problems, as described in paragraph (c)(3) of this section.

(B) *Notice of proposed termination and proposed disqualification.* If corrective action has not been taken or fully implemented for each serious management problem within the time allotted and to the State agency's satisfaction, or repeat serious management problems occur before full correction is achieved (as described in paragraph (c)(3) of this section), the State agency must:

(1) Notify the executive director, chair of the board of directors, owner, responsible principals, and responsible individuals, that the State agency proposes to terminate the sponsor's agreement and proposes to disqualify the sponsor, responsible principals and responsible individuals and explain the sponsor's opportunity for seeking a fair hearing as described in paragraph (g) of this section.

(2) At the same time the notice is issued, the State agency must also update the State agency list, as described in paragraph (b) of this section and provide a copy of the notice the appropriate FNSRO.

(3) The notice must specify:

(i) That the State agency is proposing to terminate the sponsor's agreement and proposing to disqualify the sponsor and the responsible principals and the responsible individuals;

(ii) The basis for the proposal to terminate;

(iii) That, if the sponsor voluntarily terminates its agreement with the State agency after receiving the notice of proposed termination, it will still result in the sponsor's agreement being terminated for cause and the placement of the institution and its responsible principals and responsible individuals on the National Disqualified List;

(iv) The procedures for seeking a fair hearing (in accordance with paragraph (g) of this section) of the proposed termination and proposed disqualifications; and

(v) That, unless participation has been suspended, the sponsor may continue to participate and receive Program reimbursement for eligible meals served and allowable administrative costs incurred until the fair hearing is complete.

(iii) *Third notification—Notice to vacate the proposed termination of the sponsor's agreement or notice of serious deficiency, termination of the agreement, and disqualifications—*

(A) *Notice to vacate the proposed termination of a sponsor's agreement.* If the fair hearing vacates the proposed termination, the State agency must notify the sponsor and must:

(1) Notify the sponsor's executive director and chair of the board of directors that the proposed termination of the sponsor's agreement has been vacated.

(2) Update the State agency list at the time the notice is issued;

(3) Provide a copy of the notice to the appropriate FNSRO.

(B) *Notice of serious deficiency, termination of the sponsor's agreement and disqualifications.* When the time for requesting a fair hearing expires or

when the hearing official upholds the State agency's proposed termination and disqualifications, the State agency must:

(1) Notify the institution's executive director and chair of the board of directors, and the responsible principals and responsible individuals, that the sponsor's agreement is terminated and that the sponsor and the responsible principals and responsible individuals are disqualified and placed on the National Disqualified List;

(2) Update the State agency list at the time notice is issued; and

(3) Provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

(b) *Placement on the State agency list.*

(1) The State agency must maintain a State agency list, made available to FNS upon request, and must include the following information:

(i) Names and mailing addresses of each sponsor that is determined to have a serious management problem;

(ii) Names, mailing addresses, and dates of birth of each responsible principal and responsible individual;

(iii) The status of the sponsor as it progresses through the stages of corrective action, termination, and disqualification, full correction, as applicable.

(2) Within 10 days of receiving a notice of termination and disqualification from a sponsoring organization, the State agency must provide FNS with the information as described in paragraphs (b)(1)(i) and (ii) of this section.

(c) *Correcting serious management problems.* In response to the notice of serious management problems, the sponsor must submit, in writing, what corrective actions it has taken to correct each serious management problem.

(1) *Corrective action plans.* An acceptable corrective action plan must demonstrate that the serious management problem is resolved. The plan must address the root cause of each serious management problem, describe and document the action taken to correct serious management problems, and describe the action's outcome. The corrective action plan must include the following:

(i) What is the serious management problem and the action taken to address it?

(ii) Who addressed the serious management problem? List personnel responsible for this task.

(iii) When was the action taken to address the serious management problem? Provide a timeline for implementing the action (*i.e.*, daily,

weekly, monthly, or annually, and when did implementation of the plan begin)?

(iv) Where is documentation of the corrective action plan filed?

(v) How were staff and providers informed of the new policies and procedures?

(2) *Corrective action timeframes.*

Corrective action must be taken within the allotted time to ensure that serious management problems are quickly addressed and fully corrected. The time allotted to correct the serious management problem must be appropriate for the type of serious management problem. The allotted time begins on the date the first notification is received, as described in paragraph (a)(6)(i) of this section. The serious management problems must be corrected as soon as possible and:

(i) Up to 10 days from the date the sponsor receives the first notification.

(ii) More than 10 days only if the State agency determines that corrective action will require the long-term revision of management systems or processes, such as, but not limited to, the purchase and implementation of new claims payment software or a major reorganization of Program management duties that will require action by the board of directors.

(A) The State agency may permit more than 10 days to complete the corrective action.

(B) The sponsor's corrective action plan must include milestones and a definite completion date.

(C) The State agency must receive and approve the corrective action plan within 15 days from the date the sponsor received the notice.

(D) The State agency must monitor full implementation of the corrective action plan.

(iii) Up to 5 days for a sponsor that:

(A) Engaged in an unlawful practice,

(B) Submitted a false or fraudulent claim to the State agency,

(C) Submitted other false or fraudulent information to the State agency,

(D) Was convicted of a crime, or

(E) Concealed a criminal background.

(3) *Achieving full correction of serious management problems.* The path to full correction requires the sponsor to demonstrate that it has the ability to operate the Program with no serious management problems, as described in paragraph (a) of this section. The State agency must prioritize follow-up reviews and more frequent full reviews of sponsors with serious management problems, as described in § 225.7(e)(4)(ii). A follow-up review must be conducted to confirm that the serious management problem is corrected. Full reviews must be

conducted at least once every year. Full correction of a sponsor's serious management problems is achieved when:

(i) At least two full reviews reveal no new or repeat serious management problems;

(ii) The first and last full reviews are at least 12 months apart and reveal no new or repeat serious management problems; and

(iii) All reviews, including any follow-up reviews, between the first and last full review reveal no new or repeat serious management problems.

(iv) Once full correction is achieved, a serious management problem that recurs again, is not considered repeat and therefore, would not lead to an immediate proposal of termination. Any new or recurrence of a serious management problem would require the State agency to issue a new notice of serious management problems, as described in paragraph (a)(6) of this section.

(d) *Termination*—(1) *Termination for cause*. If the State agency determines that the sponsor is unable to properly perform its responsibilities under its Program agreement and fails to take successful corrective action, the Program agreement must be terminated for cause. The State agency and sponsoring organization must declare the sponsor to be seriously deficient at the point of termination, which would be followed by disqualification. The State agency shall not terminate for convenience to avoid implementing the serious deficiency process.

(2) *Contingency plan*. The State agency must have a contingency plan in place for the transfer of sites if a sponsor is terminated or disqualified to ensure that eligible children continue to have access to meal services.

(e) *Disqualification*—(1) *Reciprocal disqualification*. A State agency may not enter into an agreement with any sponsor, if they have been terminated for cause from any child nutrition program and placed on a National Disqualified List. Any existing agreements with the sponsor must also be terminated and the sponsor and all responsible principals and responsible individuals must also be terminated and disqualified.

(i) No individual on the National Disqualified List may serve as a principal at any sponsor.

(ii) The State agency must not approve the application of a new or experienced sponsor if any of the sponsor's principals is on the National Disqualified List.

(iii) A sponsor is prohibited from submitting an application on behalf of a

site if any of the site's principals are on the National Disqualified List.

(iv) A sponsor is prohibited from submitting an application on behalf of a site if the site is on the National Disqualified List.

(v) The State agency must not approve an application described in paragraphs (e)(1)(iii) and (iv) of this section.

(vi) Once included on the National Disqualified List, a sponsor, responsible principal, or responsible individual will remain on the list until such time as the State agency determines that either the serious management problem that led to its placement on the list has been corrected or until 7 years have elapsed since its agreement was terminated for cause, whichever is longer. Any debt owed under the Program must be repaid.

(2) *National Disqualified List*. FNS will maintain the National Disqualified List and make it available to all State agencies and all sponsors. This computer matching program uses a Computer Matching Act system of records of information on institutions and individuals who are disqualified from participation in SFSP and CACFP.

(i) *Placement on the National Disqualified List*. The State agency must provide the following information to FNS for each sponsor, responsible principle, and responsible individual:

(A) Name and address of the sponsor (including city, State, and zip code);

(B) Any known aliases;

(C) Termination date;

(D) Amount of debt owed, if any;

(E) Reason, and if other is checked, an explanation;

(F) Date of birth of the responsible principal and responsible individual; and

(G) Position within the institution or facility of the responsible principal and responsible individual.

(ii) *Removal from the National Disqualified List*. A sponsor, responsible principal and responsible individual that has been disqualified from the Program due to uncorrected serious management problems will remain on the National Disqualified List until the State agency and FNS have determined that the serious management problems are corrected, or for 7 years, whichever is longer. Any debt under the Program must be repaid. After a sponsor, responsible principal or responsible individual has been removed from the National Disqualified List, they will be considered to be in good standing, and eligible to apply for the Program.

(iii) *Early removal of sponsors, principals, and individuals from the list*. The State agency must review and approve a sponsor or responsible

principal and responsible individual's request for removal from the National Disqualified List. If the State agency approves the request, and ensures that any debt associated has been paid, it may submit the information to the FNSRO, where it will be reviewed for completeness. The FNSRO will also ensure that the State agency's request is within Program requirements and that the documentation supports the early removal. Once reviewed, the FNSRO will submit the request to the FNS National Office for removal. The effective date of National Disqualified List removal will be the date on which the FNS National Office processes the removal request. The FNSRO will be notified once the removal has been completed and inform the State agency.

(3) *Computer Matching Act (CMA)*. The Computer Matching and Privacy Protection Act addresses the use of information from computer matching programs that involve a Federal System of Records. Address: compliance, matching agreement, and independent verification.

(i) Each State agency participating in a computer matching program must comply with the provisions of the Computer Matching Act if it uses an FNS system of records in order to:

(A) Establish eligibility for a Federal benefit program;

(B) Verify eligibility for a Federal benefit program;

(C) Verify compliance with either statutory or regulatory requirements of a Federal benefit program; or

(D) Recover payments or delinquent debts owed under a Federal benefit program.

(ii) State agencies must enter into written agreements with USDA/FNS, consistent with 5 U.S.C. 552a(o) of the Computer Matching Act, in order to participate in a matching program involving a USDA/FNS Federal system of records. The agreement must include the State agency's independent verification requirements.

(iii) State agencies are prohibited from taking any adverse action to terminate, deny, suspend, or reduce benefits to an applicant or recipient based on information produced by a Federal computer matching program that is subject to the requirements of the Computer Matching Act, unless:

(A) The information has been independently verified by the State agency; and

(B) FNS has waived the two-step independent verification and notice requirement.

(iv) A State agency that receives a request for verification from another State agency or from FNS must provide



the necessary verification. The State agency must respond within 20 calendar days of receiving the request.

(v) A State agency may use the record of a certified notice to independently verify the accuracy of a computer match.

(f) *Fair hearing*—(1) *Right to a fair hearing.* (i) The sponsor must be advised in writing of the grounds upon which the State agency based the action and its right to a fair hearing. The State agency must offer a fair hearing in the notice to the sponsor for any of the actions described in § 225.13(a). A fair hearing for any other action is not required.

(ii) The notice of due process must inform the sponsor of:

(A) The action that is taken or proposed to be taken;

(B) The legal basis for the action;

(C) The right to appeal the action; and

(D) The procedures and deadlines for requesting an appeal of the action.

(iii) If a fair hearing is requested:

(A) The State agency must continue to pay any valid claims for reimbursement of eligible meals served and allowable administrative expenses incurred until the hearing official issues a decision.

(B) Any information upon which the State agency based its action must be available to the appellants for inspection from the date of receipt of the hearing request.

(C) Appellants may request a fair hearing in person or by submitting written documentation to the hearing official.

(D) Appellants may represent themselves, retain legal counsel, or be represented by another person.

(E) All parties must submit written documentation to the hearing official prior to the beginning of the hearing, within 30 days after receiving the notice of action.

(F) Appellants must be permitted to contact the hearing official directly.

(2) *Fair hearing procedures.* A hearing must be held by the fair hearing official in addition to, or in lieu of, a review of written information only if the sponsor or the responsible principals and responsible individuals request a hearing in the written request for a fair hearing. If the sponsor's representative or the responsible principals or responsible individuals or their representatives, fails to appear at a scheduled hearing, they waive the right to a personal appearance before the hearing official, unless the hearing official agrees to reschedule the hearing. A representative of the State agency must be allowed to attend the hearing to respond to the testimony of the sponsor and the responsible principals and

responsible individuals and to answer questions posed by the hearing official. If a hearing is requested, the sponsor, the responsible principals, and responsible individuals, and the State agency must be provided with at least 5 days advance notice of the time and place of the hearing.

(i) The purpose of the hearing is to determine that the State agency, sponsor, responsible principals, or responsible individuals, followed Program requirements.

(ii) The hearing official's decisions should be limited to that purpose.

(iii) The purpose is not to determine whether to uphold the legality of Federal or State Program requirements.

(iv) The request for a fair hearing must be submitted in writing no later than 10 calendar days after the date the notice of action is received. The State agency must acknowledge the request for a fair hearing within 5 calendar days of its receipt of the request. The State agency must provide a copy of the written request for a fair hearing, including the date of receipt of the request to FNS within 10 calendar days of its receipt of the request.

(3) *Hearing officials.* The individual who is appointed to conduct the fair hearing, including any State agency employee or contractor, must be independent and impartial. The sponsor, responsible principals, and responsible individuals must be permitted to contact the hearing official directly if they so desire. The State agency must ensure that the hearing official:

(i) Has no involvement in the action under appeal;

(ii) Does not occupy a position that may potentially be subject to undue influence from any party that is responsible for the action under appeal;

(iii) Does not occupy a position that may exercise undue influence on any party that is responsible for the action under appeal;

(iv) Has no personal interest in the outcome of the fair hearing;

(v) Has no financial interest in the outcome of the fair hearing.

(4) *Basis for decision.* The hearing official must render a decision that is based on:

(i) The determination that the State agency, sponsor, responsible principals, or responsible individuals, followed Program requirements;

(ii) The information provided by the State agency, sponsor, responsible principals, and responsible individuals; and

(iii) The Program requirements established in Federal and State laws, regulations, policies, and procedures.

(5) *Final decision.* The hearing official's decision is the final action in the appeal process.

(i) Within 10 days of the State agency's receipt of the request for a fair hearing, the fair hearing official must inform the State agency, the sponsor's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the fair hearing's outcome.

(ii) The hearing official must render a decision within 30 days of the date the State agency received the appeal request.

(iii) The hearing official must inform the State agency, sponsor, responsible principals, and responsible individuals of the decision within this 30-day period.

(iv) This timeframe is a requirement and cannot be used to justify overturning the State agency action if a decision is not made within the 30-day period.

(v) The hearing official's decision is final.

(vi) The decision is not subject to appeal.

(6) *Effect of State agency action.* The State agency's action must remain in effect during the fair hearing. The effect of this requirement on particular State agency actions is as follows:

(i) *Overpayment demand.* During the period of the fair hearing, the State agency is prohibited from taking action to collect or offset the overpayment. However, the State agency must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the State agency's action.

(ii) *Recovery of advances.* During the fair hearing, the State agency must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

(g) *Payments*—(1) *Payment of valid claims.* If a fair hearing is requested, the State agency must continue to pay any valid claims for reimbursement of eligible meals served and allowable administrative expenses incurred un the hearing official issues a decision.

(2) *Debts owed to the Program.* The State agency is responsible for the collection of unearned payments, including any assessment of interest, as described in § 225.12(b).

(i) After the State agency has sent the necessary demand letter for debt collection, State agency staff must refer the claim to the appropriate State

authority for pursuit of the debt payment.

(ii) FNS defers to the State’s laws and procedures to establish a repayment plan to recover funds as quickly as possible.

(iii) It is the responsibility of the State agency to notify the sponsor that interest will be charged. Interest must be assessed on sponsors’ debts established on or after July 29, 2002. Interest will continue to accrue on debts not paid in full within 30 days of the initial demand for remittance up to the date of payment, including during an extended payment plan and each month while on the National Disqualified List.

(iv) State agencies are required to assess interest using one uniform rate. The appropriate rate to use is the Current Value of Funds Rate, which is published annually by Treasury in the **Federal Register** and is available from the FNSRO.

(h) *FNS determination of serious management problems*—(1) *General*. FNS may determine independently that a sponsor has one or more serious management problems, as described in paragraph (a) of this section. FNS will follow procedures outlined in this section to address any finding that prevents a sponsor from meeting the Program’s performance standards, affects the integrity of a claim for reimbursement, or affects the integrity of the meals served in a day care home or unaffiliated center.

(2) *Required State agency action*—(i) *Termination of agreements*. If the State agency holds an agreement with a sponsor that FNS determines to be seriously deficient and subsequently disqualifies, the State agency must terminate the sponsor’s agreement effective no later than 45 days after the date of the sponsor’s disqualification by FNS. As noted in paragraph (f) of this section, the termination of an agreement for this reason is not subject to a fair hearing. At the same time the notice of termination is issued, the State agency must add the sponsor to the State agency list and provide a copy of the notice to the appropriate FNSRO.

(ii) *Disqualified responsible principal and individuals*. If the State agency holds an agreement with a sponsor whose principal FNS determines to be seriously deficient and subsequently disqualifies, the State agency must initiate action to terminate and disqualify the sponsor in accordance with the procedures in paragraph (a)(6)(ii)(B) of this section. The State agency must initiate these actions no later than 45 days after the date of the principal’s disqualification by FNS.

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

■ 18. 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.

■ 19. In § 226.2:

- a. Remove the definitions for “Administrative review” and “Administrative review official”;
- b. Add in alphabetical order the definitions for “Cognizant Regional office”, “Cognizant State agency”, “Contingency plan”, and “Corrective action”;
- c. Revise the definition for “Disqualified”;
- d. Add in alphabetical order the definitions for “Fair hearing”, “Finding”, “Fiscal action”, “Full correction”, “Good standing”, “Hearing official”, “Lack of business integrity”, “Legal basis”, and “Multi-State sponsoring organization (MSSO)”;
- e. Revises the definitions for “National Disqualified List” and “Notice”;
- f. Add the definitions for “Program operator”, “Responsible individual” and “Responsible principal”;
- g. Remove the definition for “Responsible principal or responsible individual”;
- h. Add the definitions for “Review cycle” and “Serious management problem”; and
- i. Revise the definitions for “Seriously deficient”, “State agency list”, “Termination for cause”.

The revisions and additions read as follows:

**§ 226.2 Definitions**

\* \* \* \* \*

*Cognizant Regional office* means the FNSRO which acts on behalf of the Department in the administration of the Program and is responsible for determining which State agency has cognizance when a multi-State sponsoring organization operates the Program.

*Cognizant State agency* means the agency which is responsible for the administration of the Program in the State where a multi-State sponsoring organization’s headquarters is located.

*Contingency plan* means the State agency’s written process for the transfer of sponsored centers and day care homes that will help ensure that Program meals for children and adult participants will continue to be available without interruption if a sponsoring organization’s agreement is terminated.

*Corrective action* means implementation of a solution, written in a corrective action plan, to address the root cause and prevent the recurrence of a serious management problem.

\* \* \* \* \*

*Disqualified* means the status of an institution, facility, responsible principal, or responsible individual who is ineligible for participation in the Program.

\* \* \* \* \*

*Fair hearing* means due process provided upon request to:

(1) An institution that has been given notice by the State agency of an action that will affect participation or reimbursement under the Program;

(2) A principal or individual responsible for an institution’s serious management problem and issued a notice of proposed termination and proposed disqualification from Program participation; or

(3) An individual responsible for a day care home or unaffiliated center’s serious management problem and issued a notice of proposed disqualification from Program participation.

\* \* \* \* \*

*Finding* means a violation of a regulatory requirement identified during a review.

*Fiscal action* means the recovery of an overpayment or claim for reimbursement that is not properly payable through direct assessment of future claims, offset of future claims, disallowance of overclaims, submission of a revised claim for reimbursement, or disallowance of funds for failure to take corrective action to meet Program requirements.

\* \* \* \* \*

*Full correction* means the status achieved after a corrective action plan is accepted and approved, all corrective actions are fully implemented, and no new or repeat serious management problem is identified in subsequent reviews, as described in § 226.25(c).

\* \* \* \* \*

*Good standing* means the status of a program operator that meets its Program responsibilities, is current with its financial obligations, and if applicable, has fully implemented all corrective actions within the required period of time.

\* \* \* \* \*

*Hearing official* means an individual who is responsible for conducting an impartial and fair hearing—as requested by an institution, responsible principal, or responsible individual responding to

a proposal for termination—and rendering a decision.

\* \* \* \* \*

*Lack of business integrity* means the conviction or concealment of a conviction for fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice.

*Legal basis* means the lawful authority established in statute or regulation.

\* \* \* \* \*

*Multi-State sponsoring organization (MSSO)* means an organization that sponsors facilities in more than one State.

*National Disqualified List (NDL)* means a system of records, maintained by the Department, of institutions, responsible principals, and responsible individuals disqualified from participation in the Program.

\* \* \* \* \*

*Notice* means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a State agency or FNS with regard to an institution's Program reimbursement or participation. Notice also means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a sponsoring organization with regard to a day care home or unaffiliated center's participation.

\* \* \* \* \*

*Program operator* means any entity that participates in one or more Child Nutrition Programs.

\* \* \* \* \*

*Responsible individual* means any individual employed by, or under contract with an institution or facility, or any other individual, including uncompensated individuals, who the State agency or FNS determines to be responsible for an institution or facility's serious management problem.

*Responsible principal* means any principal, as described in this section, who the State agency or FNS determined to be responsible for an institution's serious management problem.

*Review cycle* means the frequency and number of required reviews of institutions and facilities.

\* \* \* \* \*

*Serious management problem* means the finding(s) that relates to an institution's inability to meet the Program's performance standards or that

affects the integrity of a claim for reimbursement or the quality of meals served in a day care home or center.

*Seriously deficient* means the status of an institution or facility after it is determined that full corrective action will not be achieved and termination for cause is the only appropriate course of action.

\* \* \* \* \*

*State agency list* means an actual paper or electronic list, or the retrievable paper records, maintained by the State agency, that includes information on institutions and day care home providers or unaffiliated centers through the serious deficiency process in that State. The list must be made available to FNS upon request and must include information specified in § 226.25(b).

\* \* \* \* \*

*Termination for cause* means the termination of a Program agreement due to considerations related to an institution or a facility'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.

\* \* \* \* \*

- 20. In § 226.6:
  - a. In paragraph (b)(1), revise the second sentence;
  - b. In paragraph (b)(1)(xii), remove the word "principals" and adding in its place the words "responsible principals or responsible individuals" wherever it appears;
  - c. Revise paragraphs (b)(1)(xiii) and (b)(1)(xiv)(A) and (B);
  - d. Add paragraphs (b)(1)(xv)(A) and (b)(1)(xix) ;
  - e. In paragraph (b)(2), remove the word "principals" and adding in its place the words "responsible principals or responsible individuals" wherever it appears;
  - f. In paragraph (b)(2)(ii)(F), remove the word "and";
  - g. In paragraph (b)(2)(ii)(G), remove "." and adding in its place "; and";
  - h. Add paragraph (b)(2)(ii)(H);
  - i. Revise paragraph (b)(2)(iii)(D);
  - j. In paragraph (b)(2)(iii)(F), add a new second sentence;
  - k. Add paragraph (b)(2)(iii)(L);
  - l. In paragraph (b)(3)(i), revise the last two sentences;
  - m. Remove paragraphs (b)(4)(ii) and (iii) and (c);
  - n. Remove paragraphs (k) and (l) and redesignate paragraphs (m) through (q)

as paragraphs (k) through (o), respectively;

- o. Revise newly redesignated paragraph (k)(2);
- p. In newly redesignated paragraph (k)(3)(x), remove the words "paragraph (m)(5)" and add in their place the words "paragraph (k)(5)";
- q. In newly redesignated paragraph (k)(3)(xi) remove the word "and";
- r. In newly redesignated paragraph (k)(3)(xii) remove "." and add in its place "; and";
- s. Add paragraph (k)(3)(xiii);
- t. In newly redesignated paragraph (k)(4) remove the words "paragraph (m)(6)" and add in their place the words "paragraph (k)(6)";
- u. In newly redesignated paragraph (k)(5) remove the words "paragraph (m)" and add in their place the words "paragraph (k)";
- v. Revise newly redesignated paragraph (m);
- w. In newly designated paragraph (n), remove the citation "\$ 226.16(l)" and add in its place the citation "\$ 226.25";
- x. Redesignate paragraph (r) as paragraph (p) and add new paragraph (q).

The additions and revisions read as follows:

**§ 226.6 State agency administrative responsibilities.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* The State agency must also determine if the sponsoring organization operates in more than one State. \* \* \*

\* \* \* \* \*

(xiii) *Ineligibility for other publicly funded programs—(A) General.*

*Ineligibility for other publicly funded programs.* A State agency is prohibited from approving an institution or facility's application if, the institution, facility, responsible principals, or responsible individuals:

(1) Have been declared ineligible for any other publicly funded program by reason of violating that program's requirements, during the past 7 years. 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.

(2) Were terminated for cause from any program authorized under this part or parts 210, 215, 220, or 225 of this chapter and are currently listed on a

National Disqualified List, per paragraph (b)(1)(xiii) of this section; State agencies must develop a process to share information on any institution, facility, responsible principal, or responsible individual not approved to administer or participate in the programs as described under paragraph (b)(2)(iii)(A)(1) of this section. The State agency must work closely with any other Child Nutrition Program State agency within the State to ensure information is shared for program purposes and on a timely basis. The process must be approved by FNS.

(B) *Certification.* Institutions must submit:

(1) A statement listing the publicly funded programs in which the institution, and its responsible principals and responsible individuals have participated in the past 7 years; and

(2) A certification that, during the past 7 years, neither the institution nor any of its responsible principals or responsible individuals have been declared ineligible to participate in any other publicly funded program by reason of violating that program's requirements; or

(3) In lieu of the certification, documentation that the institution or the responsible principals or responsible individuals previously declared ineligible was later fully reinstated in, or determined eligible for, the program, including the payment of any debts owed.

(C) *Follow-up.* If the State agency has reason to believe that the institution, facility, its responsible principals or responsible individuals were determined ineligible to participate in another publicly funded program by reason of violating that program's requirements, 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.

(xiv) *Information on criminal convictions.* (A) A State agency is prohibited from approving an institution's application if the institution or any of its principals has been convicted of any activity that occurred during the past 7 years and that indicated a lack of business integrity, as described in § 226.2, any other activity indicating a lack of business integrity as defined by the State agency; and

(B) Institutions must submit a certification that neither the institution nor any of its principals has been convicted of any activity that occurred during the past seven years and that

indicated a lack of business integrity, as described in § 226.2, or any other activity indicating a lack of business integrity as defined by the State agency;

(xv) \* \* \*

(A) Each principal who fills a position that the State agency designates as responsible must submit signed certifications acknowledging Program responsibility.

(B) [Reserved] \* \* \* \* \*

(xix) *Information about MSSO operations.* Sponsoring organizations approved to participate in the Program in more than one State must provide:

(A) The number of affiliated centers it sponsors, by State;

(B) The number of unaffiliated centers it sponsors, by State;

(C) The number of day care homes it sponsors, by State;

(D) The names, addresses, and phone numbers of the organization's headquarters and the officials who have administrative responsibility;

(E) The names, addresses, and phone numbers of the financial records center and the officials who have financial responsibility; and

(F) The organization's decision on whether to use program funds for administrative expenses.

\* \* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(H) Information about MSSO operations, as described in paragraph (b)(1)(xix) of this section, is up-to-date.

(iii) \* \* \*

(D) *Ineligibility for other publicly funded programs.* A State agency is prohibited from approving a renewing institution or facility's application if, the institution, facility, responsible principals, or responsible individuals:

(1) Have been declared ineligible for any other publicly funded program by reason of violating that program's requirements, during the past 7 years. 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.

(2) Were terminated for cause from any program authorized under this part or parts 210, 215, 220, or 225 of this chapter and are currently listed on a National Disqualified List, per paragraph (b)(1)(xiii) of this section. State agencies must develop a process to

share information on any institution, facility, responsible principal, or responsible individual not approved to administer or participate in the programs as described under paragraph (b)(2)(iii)(A)(1) of this section. The State agency must work closely with any other Child Nutrition Program State agency within the State to ensure information is shared for program purposes and on a timely basis. The process must be approved by FNS.

\* \* \* \* \*

(F) *Submission of names and addresses.* \* \* \* The State agency must also ensure that the signed certifications acknowledging Program responsibility, as described in paragraph (b)(1)(xv)(A) of this section are up-to-date. \* \* \*

\* \* \* \* \*

(L) *Multi-state sponsoring organizations.* The State agency must ensure that the MSSO's operations, as described in paragraph (b)(1)(xix) of this section, are up-to-date. If the MSSO has facilities not previously reported to the State agency, as described in paragraph (b)(1)(xix) of this section, the MSSO must update the information.

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \* Any disapproved applicant institution must be notified of the reasons for its disapproval and its right to appeal. 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 § 226.25(g).

\* \* \* \* \*

(4) \* \* \*

(ii) 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.

(iii) 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.

(A) The State agency must terminate the agreement for cause as described in § 226.25(d)(1).

(B) 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.

(C) 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.

(D) The State agency, institution, or facility cannot terminate for convenience to avoid actions related to serious management problems. Termination procedures as a result of the serious deficiency process can be found in § 226.25.

(c) *Denial of a new institution's application.* (1) *Denial of applications that do not meet minimum requirements.* The State agency must deny the application, if a new institution's application does not meet all of the requirements in paragraph (b) of this section and in §§ 226.15(b) and 226.16(b).

(2) *Denial of applications by ineligible applicants.* The State agency must deny the application and must initiate action to disqualify the new institution and the responsible principals, including the person who signs the application, and responsible individuals if the State agency determines that the institution has:

(i) Submitted false information on its application, including but not limited to a determination that the institution has concealed a conviction for any activity that occurred during the past seven

years and that indicates a lack of business integrity; or

(ii) Any other action affecting the institution's ability to administer the Program in accordance with Program requirements.

(3) *Denial and disqualification notification procedures.* If the State agency initiates action to deny and disqualify the new institution, the State agency must use the procedures described in paragraph (c)(4) of this section to provide the institution and the responsible principals and responsible individuals with notice for the basis of denial and an opportunity to take corrective action.

(4) *Notice of proposed denial and proposed disqualification.* If the State agency initiates action to deny the institution's application, the State agency must notify the institution's executive director and chairman of the board of directors. The notice must identify the responsible principals, including the person who signed the application, and responsible individuals and must be sent to those persons as well. The State agency may specify in the notice different corrective actions and time periods for completing the corrective action for the institution and the responsible principals and responsible individuals. At the same time the notice is issued, the State agency must add the institution to the State agency list, along with the basis for denial, and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

(i) The basis of denial;  
(ii) The corrective actions required to be taken;  
(iii) The time allotted for corrective actions;

(v) That failure to complete the corrective actions within the allotted time will result in denial of the institution's application and the disqualification of the institution and the responsible principals and responsible individuals;

(vi) That the State agency will not pay any claims for reimbursement for eligible meals served or allowable administrative expenses incurred until the State agency has approved the institution's application and the institution has signed a Program agreement; and

(vii) That the institution's withdrawal of its application, after having been notified of its proposed denial and proposed disqualification, will still result in the institution's application being denied and placement of the institution and its responsible principals and responsible individuals

on the National Disqualified List by the State agency; and

(viii) That, if the State agency does not possess the date of birth for any individual named as a "responsible principal" or "responsible individual" in the notice of proposed denial and proposed disqualification, the submission of that person's date of birth is a condition of corrective action.

(5) *Successful corrective action.* (i) If corrective action has been completed within the allotted time and to the State agency's satisfaction, the State agency must:

(A) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the corrective actions are complete; and

(B) Offer the new institution the opportunity to resubmit its application. If the new institution resubmits its application, the State agency must complete its review of the application within 30 days after receiving a complete and correct application.

(ii) If corrective action is complete for the institution but not for all of the responsible principals and responsible individuals, the State agency must:

(A) Continue with the actions, as described in paragraph (c)(4) of this section, against the remaining parties;

(B) At the same time the notice is issued, the State agency must also update the State agency list to indicate that the corrective actions are complete and provide a copy of the notice to the appropriate FNSRO.

(iii) If the State agency initially approves the institution's application and the State agency and institution have a signed permanent agreement, the State agency must follow procedures, as described in § 226.25, for any serious management problems that occur.

(iv) If the institution is still in the process of applying and the State agency initially determined that the institution's corrective action is complete, but later the same problem occurs, the State agency must move immediately to issue a notice of intent to deny the application and disqualify the institution, as described in paragraph (c)(6) of this section.

(6) *Application denial and proposed disqualification.* If timely corrective action is not completed, the State agency must notify the institution's executive director and chair of the board of directors, and the responsible principals and responsible individuals, that the institution's application has been denied. At the same time the notice is issued, the State agency must also update the State agency list and provide a copy of the notice to the

appropriate FNSRO. The notice must also specify:

(i) That the institution's application has been denied and the State agency is proposing to disqualify the institution and the responsible principals and responsible individuals;

(ii) The basis for denial; and

(iii) The procedures for seeking a fair hearing, as described in § 226.25(g), of the application denial and proposed disqualifications.

(7) *Program payments.* The State agency is prohibited from paying any claims for reimbursement from a new institution for eligible meals served or allowable administrative expenses incurred until the State agency has approved its application and the institution and State agency have signed a Program agreement.

(8) *Disqualification.* When the time for requesting a fair hearing expires or when the hearing official upholds the State agency's denial and proposed disqualifications, the State agency must notify the institution's executive director and chair of the board of directors, and the responsible principals and responsible individuals that the institution and the responsible principal and responsible individuals have been disqualified. At the same time the notice is issued, the State agency must also update the State agency list and provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

\* \* \* \* \*

(k) \* \* \*

(2) *Review priorities.* In choosing institutions for review, as described in paragraph (k)(6) of this section, the State agency must target for more frequent review of institutions whose prior review included serious management problems.

(3) \* \* \*

(xiii) If a sponsoring organization of day care homes or unaffiliated centers, implementation of the serious deficiency and termination procedures for day care homes and unaffiliated centers and, if these procedures have been delegated to sponsoring organizations, as described in paragraph § 226.25(g) of this section, the fair hearing procedures for day care homes or unaffiliated centers.

\* \* \* \* \*

(m) *Child care standards compliance.* The State agency shall, when conducting reviews of child care centers, and day care homes approved by the State agency under *paragraph (d)(3)* of this section, determine compliance with the child care

standards used to establish eligibility, and the institution shall ensure that all findings are corrected and the State shall ensure that the institution has corrected all findings. If findings are not corrected within the specified timeframe for corrective action, the State agency must follow procedures for termination, described in § 226.25(d). However, if the health or safety of the children is imminently threatened, the State agency or sponsoring organization must follow the procedures, described in § 226.25(f). The State agency may deny reimbursement for meals served to attending children in excess of authorized capacity.

\* \* \* \* \*

(q) *Oversight of MSSOs.* An MSSO may include a sponsoring organization that administers the Program in more than one State, a franchise operating multiple facilities in more than one State, or a for-profit organization whose parent corporation operates multiple affiliated centers in more than one State. Each State agency must determine if a sponsoring organization is an MSSO, as described in paragraphs (b)(1)(xix) and (b)(2)(iii)(L). The State agency must assume the role of the CSA, if the MSSO's center of operations is located within the State. Each State agency that approves an MSSO must follow the requirements described in paragraph (q)(1) of this section. The CSA must follow the requirements described in paragraph (q)(2) of this section.

(1) If the State agency determines that an MSSO provides operates the Program within the State,

(i) Enter into a permanent written agreement with the MSSO, as described in paragraph (b)(4) of this section.

(ii) Approve the MSSO's administrative budget (in consultation with the CSA, as appropriate).

(A) The State agency must approve budget line items that are directly attributable to operations within the State.

(B) The State agency must approve its portion of costs that are shared among other State agencies and costs that attribute directly to program operations within the State.

(C) The State agency must notify the CSA if any of the MSSO's administrative costs exceed the 15 percent limit, as described in paragraph (f)(1)(iv) of this section.

(iii) Conduct monitoring of MSSO Program operations within the State, as described in paragraph (k)(4) of this section. The State agency should coordinate monitoring with the CSA to streamline reviews and minimize duplication of the review content. The

State agency may base the review cycle on the number of facilities operating within the State.

(A) The State agency may use information from the CSA's technical assistance activities to assess compliance in areas where the scope of review overlaps during the same review cycle. The State agency may choose to conduct a review of implementation of additional State agency requirements, financial records to support State-specific administrative costs, and other areas of compliance that the CSA would not have reviewed.

(B) The State agency may also choose to conduct a full review at the MSSO's headquarters and financial records center. If the State agency chooses to conduct a full review, the State agency should request the necessary records from the CSA.

(C) The State agency must provide summaries of the MSSO reviews that are conducted to the CSA. The summaries must include the prescribed corrective actions and follow-up efforts.

(iv) Conduct audit resolution activities. The State agency must review audit reports, address audit findings, and implement corrective actions, as required under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415.

(v) Notify all other State agencies that have agreements with the MSSO of termination and disqualification actions, as described in paragraph (c)(2)(i) of this section.

(2) CSA responsibilities. If it determines that an MSSO's center of operations is located within the State, the State agency must assume the role of the CSA, which must:

(i) Comply with the requirements for a State agency that has approved an MSSO to provide Program operations within the State, as described in paragraph (q)(1).

(ii) Determine if there will be shared administrative costs among the States in which the MSSO operates and how the costs will be allocated. The CSA has the authority to approve cost levels for cost items that must be allocated. The CSA must approve the allocation method that the MSSO uses for shared costs. The method must allocate the cost based on the benefits received, not the source of funds available to pay for the cost. If the MSSO administers the Program in centers, the CSA must also ensure that administrative costs do not exceed 15 percent on an organization-wide basis.

(iii) Coordinate monitoring. The CSA must conduct a full review at the MSSO headquarters and financial records center. The CSA must coordinate the timing of reviews. The CSA must make

copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO.

(iv) Ensure that organization-wide audit requirements are met. Each MSSO must comply with audit requirements, as described under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415. Since their operations are often large and complex, MSSOs should have annual audits. If an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements.

(v) Oversee audit funding and costs. The share of organization-wide audit costs may be based on a percentage of each State's expenditure of CACFP funds and the MSSO's expenditure of Federal and non-Federal funds during the audited fiscal year. The CSA should review audit costs as part of the overall budget review and make audit reports available to the other State agencies that have agreements with the MSSO.

(vi) Ensure compliance with procurement requirements. Procurement actions involving MSSOs must follow the requirements under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415. If the procurement action benefits all States in which the MSSO operates, the procurement standards of the State that are the most restrictive apply. If the procurement action only benefits a single State's Program, the procurement standards of that State agency apply.

**§ 226.7 [Amended]**

■ 21. In § 226.7, in paragraph (c), remove the word "deficiencies" and add in its place the words "management problems".

■ 22. In § 226.10, revise paragraph (b)(2) to read as follows:

**§ 226.10 Program payment procedures.**

\* \* \* \* \*

(b) \* \* \*

(2) If the State agency has audit or monitoring evidence of extensive serious management problems or other reasons to believe that an institution will not be able to submit a valid claim for reimbursement, advance payments must be withheld until the claim is received or the corrective actions are complete.

\* \* \* \* \*

**§ 226.12 [Amended]**

■ 23. In § 226.12, in paragraph (b)(3) remove the citation "\$ 226.6(k)" and add in its place the citation "\$ 226.25(g)".

**§ 226.14 [Amended]**

■ 24. In § 226.14, in paragraph (a), remove the words "an administrative review" and "the administrative review" and add in their place the words "fair hearing" and remove the words "\$ 226.6(k). Minimum" and add in their place the words "\$ 226.25(g). Minimum".

**§ 226.15 [Amended]**

■ 25. In § 226.15, in paragraph (b), remove the citation "\$ 226.6(b)(1)(viii)" and add in its place the citation "\$ 226.6(b)(1)(xvi)".

■ 26. In § 226.16:

- a. Revise paragraphs (b)(3) and (6), the first sentence of (d)(4)(iv), and (d)(4)(v);
- b. Remove paragraph (l) and redesignate paragraph (m) as paragraph (l).

The revisions read as follows:

**§ 226.16 Sponsoring organization provisions.**

(b) \* \* \*

(3) Timely information concerning the eligibility status of each facility, such as licensing or approval actions;

\* \* \* \* \*

(6) A copy of the sponsoring organization's procedures, if the State agency has made the sponsoring organization responsible for the fair hearing of a proposed termination of a day care home or an unaffiliated center, as described in § 226.25(g);

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(iv) *Averaging of required reviews.* If a sponsoring organization conducts one unannounced review of a day care home or an unaffiliated center in a year and finds no serious management problems, as described in § 226.25, the sponsoring organization may choose not to conduct a third review of the facility that year, and may make its second review announced, provided that the sponsoring organization conducts an average of three reviews of all of its facilities that year, and that it conducts an average of two unannounced reviews of all of its facilities that year. \* \* \*

(v) *Follow-up reviews.* If, in conducting a review of a day care home or an unaffiliated center, a sponsoring organization detects a serious management problem, the next review of that day care home or unaffiliated center must be unannounced. Serious management problems are those described in § 226.25(a)(3) regardless of the type of facility.

\* \* \* \* \*

■ 27. In § 226.17, add a new sentence at the end of paragraphs (e) and (f) to read as follows:

**§ 226.17 Child care center provisions.**

\* \* \* \* \*

(e) \* \* \* The sponsoring organization may terminate this agreement for cause as described in § 226.25(a).

(f) \* \* \* The State agency may terminate this agreement for cause as described in § 226.25(a).

■ 28. In § 226.17a, add a new sentence at the end of paragraphs (f)(2)(i) and (ii) to read as follows:

**§ 226.17a At-risk afterschool center provisions.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(i) \* \* \* The sponsoring organization may terminate this agreement for cause as described in § 226.25(a).

(ii) \* \* \* The State agency may terminate this agreement for cause as described in § 226.25(a).

\* \* \* \* \*

**§ 226.18 [Amended]**

■ 29. In § 226.18:

■ a. In paragraph (b) introductory text, remove the citation "\$ 226.16(l)" and add in its place the citation "\$ 226.25"; and

■ b. In paragraph (b)(16):

■ i. Remove the words "an administrative review" and add in their place the words "a fair hearing"; and

■ ii. Remove the citation "\$ 226.16(l)(2)" and add in its place the citation "\$ 226.25".

■ 30. In § 226.19, add a new sentence at the end of paragraph (d) to read as follows:

**§ 226.19 Outside-school-hours care center provisions.**

(d) \* \* \* The sponsoring organization may terminate this agreement for cause as described in § 226.25(a).

\* \* \* \* \*

■ 31. In § 226.19a, add a new sentence at the end of paragraph (d) to read as follows:

**§ 226.19a Outside-school-hours care center provisions.**

(d) \* \* \* The sponsoring organization may terminate this agreement for cause as described in § 226.25(a).

\* \* \* \* \*

**§§ 226.25 through 226.27 [Redesignated as §§ 226.26 through 226.28]**

■ 32. §§ 226.25 through 226.27 are redesignated as §§ 226.26 through 226.28, respectively.

■ 33. Add new § 226.25 to read as follows:

**§ 226.25 Administrative actions to address serious management problems**

(a) *Serious management problems*—  
(1) *General.* State agencies and sponsoring organizations must follow the procedures outlined in this section to address any serious management problems. The State agency must provide the institution an opportunity for corrective action and due process. The sponsoring organization must provide the day care home or unaffiliated center an opportunity for corrective action and due process.

(2) *Six steps.* The serious deficiency process includes a standard set of procedures that State agencies and sponsoring organizations follow to address serious management problems in the operation of the Program. These procedures apply to serious management problems in new institutions with a signed permanent agreement, participating institutions, day care homes, and unaffiliated centers. The State agency or sponsoring organization must:

(i) Identify serious management problems.

(ii) Issue a notice of serious management problems.

(iii) Receive and assess corrective action(s).

(iv) Issue a notice of successful corrective action or a notice of proposed termination with appeal rights.

(v) Provide a fair hearing, if requested.

(vi) Issue a notice of successful appeal if the fair hearing vacates the proposed termination, or issue a notice of termination, serious deficiency, and disqualification, if the fair hearing upholds the proposed termination or the timeframe for requesting a fair hearing has passed.

(3) *Identifying serious management problems.* State agencies must consider the type and magnitude of the finding(s) to determine whether it rises to the level of a serious management problem. State agencies should define a set of standards to identify serious management problems. At a minimum, to identify serious management problems, State agencies and must consider:

(i) *The severity of the problem.* Is the finding minor or substantial? Is the finding systemic or isolated?

(ii) *The degree of responsibility.* Is the finding best described as an inadvertent error or is there evidence of negligence or conscious indifference to regulatory requirements, or even deception? Is the finding at the facility level or the institution level? If it is at the institution level, has the State agency taken appropriate steps to resolve it through monitoring, training, and technical

assistance? If it is at the facility level, has the sponsoring organization taken the appropriate steps to resolve it through monitoring, training, and technical assistance?

(iii) *The history of participation in the Program.* Is this the first instance or is there a history of frequently recurring Program findings or serious management problems at the same institution, day care home or unaffiliated center?

(iv) *The nature of requirements that relate to the finding.* Is the action a clear finding of Program requirements or a simple mistake? Are new policies incorporated correctly?

(v) *The degree to which the problem impacts Program integrity.* Does the finding undermine the intent of the Program? Is the finding administrative or does it impact viability, capability or accountability? Is the finding at the facility level or the institution level? If it is at the institution level, has the State agency taken appropriate steps to resolve it through monitoring, training, and technical assistance? If it is at the facility level, has the sponsoring organization taken the appropriate steps to resolve it through monitoring, training, and technical assistance?

(4) *Good standing.* If a State agency identifies a serious management problem, the institution, day care home or unaffiliated center is considered to be not in good standing. At a minimum, the following criteria need to be met to return to good standing.

(i) Outstanding debts are paid;

(ii) All corrective actions are fully implemented; and

(iii) Meets its Program responsibilities.

(5) *Notifications.* The State agency and sponsoring organization must provide written notice of action through each step of the serious deficiency process.

(i) Each type of notice must include a basis and an explanation of any action that is proposed and any action that is taken.

(ii) The notice must be delivered via certified mail, return receipt, or an equivalent private delivery service, facsimile, or email.

(iii) The notice is considered to be received on the date it is delivered, sent by facsimile, or sent by email.

(iv) If the notice is undeliverable, it is considered to be received 5 days after it is sent to the addressee's last known mailing address, facsimile number, or email address.

(6) *Serious management problems notification procedures for institutions.* If the State agency determines that institution has serious management

problems, the sponsoring organization must use the following procedures. The State agency must notify the institution of all findings, even those that do not rise to a serious management problem, and they must be corrected.

(i) *First notification—notice of serious management problem.* The State agency must notify the institution's executive director, chair of the board of directors that the institution has serious management problems and provide an opportunity to take corrective action. The notice must also be sent to all other responsible principal and other responsible individual. At the same time the notice is issued, the State agency must add the institution to the State agency list, as described in paragraph (b) of this section and provide a copy of the notice to the FNSRO. This notice documents that a serious management problem must be addressed and corrected. Prompt action must be taken to minimize the time that elapses between the identification of a serious management problem and the issuance of the notice. For each serious management problem, the notice must:

(A) Specify each serious management problem;

(B) Cite the specific regulatory requirements, instructions, or policies as the basis for the serious management problems;

(C) Identify the responsible principals and responsible individuals;

(D) Specify the actions that must be taken to correct each serious management problem. The notice may specify different corrective actions and time periods for completing the corrective actions for the institution and the responsible principal and the responsible individual;

(E) Set time allotted for implementing the corrective action. The corrective action must include milestones and a definite completion date that will be monitored. Although paragraph (c)(2) of this section sets maximum timeframes, shorter timeframes for corrective action may be established.

(F) Specify that failure to fully implement corrective actions for each serious management problem within the allotted time will result in the State agency's proposed termination of the institution's agreement and the proposed disqualification of the institution and the responsible principals and responsible individuals;

(G) Clearly state that, if the institution voluntarily terminates its agreement with the State agency after having been notified of serious management problems it will still result in the institution's agreement being terminated for cause and the placement of the



institution and its responsible principals and responsible individuals on the National Disqualified List;

(H) Clearly state that submission of the date of birth for any individual named as a responsible principal or responsible individual in the notice of serious management problems is a condition of corrective action for the institution and/or responsible principal or responsible individual.

(I) Clearly state that the serious management problems are not subject to a fair hearing.

(ii) *Second notification—notice of successful corrective action or notice of proposed termination, proposed disqualification—(A) Notice of successful corrective action.* If corrective action has been implemented to correct each serious management problem within the time allotted and to the State agency's satisfaction, the State agency must:

(1) Notify the executive director, chair of the board of directors, owner, responsible principals, and responsible individuals, that the corrective actions are fully implemented;

(2) If corrective action is complete for the institution, but not for all of the responsible principals and responsible individuals, the State agency must continue with actions, as described in paragraph (a)(6)(ii)(B) of this section, against the remaining parties.

(3) At the same time the notice is issued, the State agency must also update the State agency list, as described in paragraph (b) of this section and provide a copy of the notice the appropriate FNSRO.

(4) Ensure the institution continues to implement procedures and policies to fully correct the serious management problems and achieve full correction, as described in paragraph (c)(3) of this section.

(B) *Notice of proposed termination and proposed disqualification.* If corrective action has not been taken or fully implemented for each serious management problem within the time allotted and to the State agency's satisfaction, or repeat serious management problems occur before full correction is achieved, the State agency must:

(1) Notify the executive director, chair of the board of directors, owner, responsible principals, and responsible individuals, that the State agency proposes to terminate the institution's agreement and proposes to disqualify the institution, responsible principals and responsible individuals and explain the institution's opportunity for seeking a fair hearing;

(2) At the same time the notice is issued, the State agency must also update the State agency list, and provide a copy of the notice the appropriate FNSRO.

(3) The notice must specify:

(i) That the State agency is proposing to terminate the institution's agreement and proposing to disqualify the institution and the responsible principals and the responsible individuals;

(ii) The basis for the proposal to terminate;

(iii) That, if the institution voluntarily terminates its agreement with the State agency after receiving the notice of proposed termination, it will still result in the institution's agreement being terminated for cause and the placement of the institution and its responsible principals and responsible individuals on the National Disqualified List;

(iv) The procedures for seeking a fair hearing (in accordance with paragraph (g) of this section) of the proposed termination and proposed disqualifications; and

(v) That, unless participation has been suspended, the institution may continue to participate and receive Program reimbursement for eligible meals served and allowable administrative costs incurred until the fair hearing is complete.

(iii) *Third notification—Notice to vacate the proposed termination of the institution's agreement or notice of serious deficiency, termination of the agreement, and disqualifications—(A) Notice to vacate the proposed termination of an institution's agreement.* If the fair hearing vacates the proposed termination, the State agency must notify the institution and must:

(1) Notify the institution's executive director and chairman of the board of directors that the proposed termination of the institution's agreement has been vacated.

(2) Update the State agency list at the time the notice is issued;

(3) Provide a copy of the notice to the appropriate FNSRO.

(B) *Notice of serious deficiency, termination of the institution's agreement and disqualifications.* When the time for requesting a fair hearing expires or when the hearing official upholds the State agency's proposed termination and disqualifications, the State agency must:

(1) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's agreement is terminated and that the institution and the responsible principals and responsible

individuals are disqualified and placed on the National Disqualified List;

(2) Update the State agency list at the time notice is issued; and

(3) Provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

(7) *Serious management problem(s) notification procedures for day care homes and unaffiliated centers.* If the sponsoring organization determines that a day care home or unaffiliated center has serious management problems, the sponsoring organization must use the following procedures. The sponsoring organization must notify the day care home and unaffiliated centers of all findings, even those that do not rise to a serious management problem and they must be corrected.

(i) *First notification—notice of serious management problem.* The sponsoring organization must notify the day care home or unaffiliated center that it has serious management problems and offer it an opportunity to take corrective action. At the same time the notice is issued, the sponsoring organization must provide a copy of the notice to the State agency. Prompt action must be taken to minimize the time that elapses between the identification of serious management problem(s) and the issuance of the notice. For each serious management problem, the notice must:

(A) Specify the serious management problem;

(B) Cite the specific regulatory requirements, instructions, or policies as the basis for each serious management problem.

(C) Specify the actions that must be taken to correct the serious management problem(s). The notice may specify different corrective actions and time periods for completing the corrective action(s) for the day care home or unaffiliated center;

(D) Set time allotted for implementing the corrective action. The corrective action must include milestones and a definite completion date that will be monitored. Although paragraph (c)(2) of this section sets maximum timeframes, shorter timeframes for corrective action may be established.

(E) Specify that failure to fully implement corrective actions for each serious management problem within the allotted time will result in the sponsoring organization's proposed termination of the Program agreement and the proposed disqualification of the day care home and provider or unaffiliated center and its principals;

(F) Clearly state that, if the day care home or unaffiliated center voluntarily

terminates its agreement with the State agency after having been notified of serious management problems, it will still result in the day care home or unaffiliated center's agreement being terminated for cause and the placement of the day care home and provider or unaffiliated center and its principals on the National Disqualified List;

(G) Clearly state that the serious management problems are not subject to a fair hearing.

(ii) *Second notification—notice of successful corrective action or notice of proposed termination, proposed disqualification.* (A) Notice of successful corrective action. If corrective action has been implemented to correct each serious management problem within the time allotted and to the sponsoring organization's satisfaction, the sponsoring organization must:

(1) Notify the day care home or unaffiliated center, that the corrective actions are fully implemented;

(2) At the same time the notice is issued, the sponsoring organization must provide a copy of the notice to the State agency.

(3) Ensure the day care home and unaffiliated center continues to implement procedures and policies to fully correct the serious management problems, as described in paragraph (c)(3) of this section.

(B) Notice of proposed termination and proposed disqualification. If corrective action has not been taken or fully implemented for each serious management problem within the time allotted and to the sponsoring organization's satisfaction, or repeat serious management problems occur before full correction is achieved, the State agency must:

(1) Notify the day care home or unaffiliated center, that the sponsoring organization proposes to terminate the agreement and proposes to disqualify the day care home or unaffiliated center and explain the day care home or unaffiliated center's opportunity for seeking a fair hearing.

(2) At the same time the notice is issued, the sponsoring organization must also provide a copy of the notice to the State agency.

(3) The notice must also specify:

(i) The basis for the proposal to terminate;

(ii) That, if the day care home or unaffiliated center voluntarily terminates its agreement with the sponsoring organization after receiving the notice of proposed termination, it will still result in the day care home or unaffiliated center's agreement being terminated for cause and the placement of the day care home provider or

unaffiliated center and its principals on the National Disqualified List;

(iii) The procedures for seeking a fair hearing of the proposed termination and proposed disqualifications; and

(iv) That, unless participation has been suspended, the day care home or unaffiliated center may continue to participate and receive Program reimbursement for eligible meals served until the fair hearing is complete.

(iii) *Third notification—Notice to vacate the proposed termination of the facility's agreement, or notice of serious deficiency, termination of the agreement, and disqualifications—(A) Notice to vacate the proposed termination of a day care home or unaffiliated center's agreement.* If the fair hearing vacates the proposed termination, the State agency must notify the institution and must:

(1) Notify the institution's executive director and chairman of the board of directors that the proposed termination of the institution's agreement has been vacated.

(2) Provide a copy of the notice to the State agency.

(B) *Notice of serious deficiency, termination of the day care home or unaffiliated center's agreement and disqualifications.* When the time for requesting a fair hearing expires or when the hearing official upholds the sponsoring organization's proposed termination and proposed disqualifications, the sponsoring organization must immediately terminate the day care home or unaffiliated center's agreement and disqualify the day care home or unaffiliated center and its principals:

(1) Notify the day care home or unaffiliated center that its agreement is terminated and that the day care home or unaffiliated center and its principals are placed on the National Disqualified List; and

(2) Provide a copy of the notice to the State agency.

(b) *Placement on the State agency list.* (1) The State agency must maintain a State agency list, made available to FNS upon request, and must include the following information:

(i) Names and mailing addresses of each institution, day care home or unaffiliated center that is determined to have a serious management problem;

(ii) Names, mailing addresses, and dates of birth of each responsible principal and responsible individual;

(iii) The status of the institution, day care home or unaffiliated center, as it progresses through the stages of corrective action, termination, suspension, and disqualification, full correction, as applicable.

(2) Within 10 days of receiving a notice of termination and disqualification from a sponsoring organization, the State agency must provide FNS with the information as described in paragraphs (b)(1)(i) and (ii) of this section.

(c) *Correcting serious management problems.* In response to the notice of serious management problems, the institution, unaffiliated center or day care home must submit, in writing, what corrective actions it has taken to correct each serious management problem.

(1) *Corrective action plans.* An acceptable corrective action plan must demonstrate that the serious management problem is resolved. The plan must address the root cause of each serious management problem, describe and document the action taken to correct serious management problems, and describe the action's outcome. The corrective action plan must include the following:

(i) What is the serious management problem and the action taken to address it?

(ii) Who addressed the serious management problem?

(iii) When was the action taken to address the serious management problem? Provide a timeline for implementing the action (*i.e.*, daily, weekly, monthly, or annually, and when did implementation of the plan begin)?

(iv) Where is documentation of the corrective action plan filed?

(v) How were staff and providers informed of the new policies and procedures?

(2) *Corrective action timeframes.* Corrective action must be taken within the allotted time that ensures that serious management problems are quickly addressed and fully corrected. The time allotted to correct the serious management problem must be appropriate for the type of serious management problem and the type of institution or facility where the serious management problem is found. The allotted time begins on the date the first notification is received, as described in paragraphs (a)(7)(i) and (a)(8)(i) of this section.

(i) For day care homes and unaffiliated centers, the serious management problems must be corrected as soon as possible or up to 30 days from the date a day care home or unaffiliated center receives the notice.

(ii) For institutions, the serious management problems must be corrected as soon as possible or up to 90 days from the date a day care home or unaffiliated center receives the first notification.

(iii) More than 90 days only if the State agency determines that corrective action will require the long-term revision of management systems or processes, such as, but not limited to, the purchase and implementation of new claims payment software or a major reorganization of Program management duties that will require action by the board of directors.

(A) The State agency may permit more than 90 days to complete the corrective action.

(B) The institution's corrective action plan must include milestones and a definite completion date.

(C) The State agency must receive and approve the corrective action plan within 90 days from the date the institution received the notice.

(D) The State agency must monitor full implementation of the corrective action plan.

(iv) Up to 30 days for a false claim or unlawful practice. The State agency is prohibited from allowing more than 30 days for corrective action if it determines that an institution:

(A) Engaged in an unlawful practice,

(B) Submitted a false or fraudulent claim to the State agency,

(C) Submitted other false or fraudulent information to the State agency,

(D) Was convicted of a crime, or

(E) Concealed a criminal background.

(3) *Achieving full correction of serious management problems.* The path to full correction requires demonstrating the ability to operate the Program with no serious management problems, as described in paragraph (a) of this section.

(i) *Full correction of an institution's serious management problems.* The State agency must prioritize follow-up reviews and more frequent full reviews of institutions with serious management problems, as described in § 226.6(k)(6)(ii). A follow-up review must be conducted to confirm that the serious management problem is corrected. Full reviews must be conducted at least once every 2 years. Full correction of an institution's serious management problems is achieved when:

(A) At least two full reviews reveal no new or repeat serious management problems;

(B) The first and last full reviews are at least 24 months apart and reveal no new or repeat serious management problems; and

(C) All reviews, including any follow-up reviews, between the first and last full review reveal no new or repeat serious management problems.

(ii) *Full correction of a day care home or unaffiliated center's serious*

*management problems.* Sponsoring organization's must conduct reviews, as described in § 226.16(d)(4) to confirm that the serious management problem is corrected. A follow-up review must be conducted to confirm that the serious management problem is corrected. Full correction of a day care home or unaffiliated center's serious management problems is achieved when:

(A) At least three full reviews, reveal no new or repeat serious management problems.

(B) All reviews, including any follow-up reviews, between the first and last full review reveal no new or repeat serious management problems.

(iii) Once full correction is achieved, a serious management problem that recurs again, is not considered repeat and therefore, would not lead to immediate proposal to terminate. Any new or recurrence of a serious management problem after the initial full correction is achieved would require the State agency or sponsoring organization to issue a new notice of serious management problem, as described in paragraph (a) of this section.

(iv) The recurrence of a serious management problem before full correction is achieved would lead directly to proposed termination.

(d) *Termination—(1) Termination for cause.* If the State agency or sponsoring organization determines that the institution or facility is unable to properly perform its responsibilities under its Program agreement and fails to take successful corrective action, the Program agreement must be terminated for cause. The State agency and sponsoring organization would declare the institution or facility to be seriously deficient at the point of termination, which would be followed by disqualification. The State agency, institution, or facility shall not terminate for convenience to avoid implementing the serious deficiency process. Termination not related to performance can be found in § 226.6(b)(4).

(2) *Contingency plan.* A State agency must have a contingency plan in place for the transfer of facilities if a sponsoring organization is terminated or disqualified to ensure that eligible participants continue to have access to meal services.

(e) *Disqualification—(1) Reciprocal disqualification.* A State agency may not enter into an agreement with any institution, responsible principal, or responsible individual, if they have been terminated for cause from any Child Nutrition Program and placed on

a National Disqualified List, as described in § 226.6(b)(1)(xiii). Any existing agreements with an institution, responsible individual, or responsible principal must also be terminated and disqualified.

(i) No individual on the National Disqualified List may serve as a principal in any institution or facility or as a day care home provider.

(ii) The State agency must not approve the application of a new or renewing institution if any of the institution's principals is on the National Disqualified List.

(iii) A sponsoring organization is prohibited from submitting an application on behalf of a sponsored facility if any of the facility's principals are on the National Disqualified List.

(iv) A sponsoring organization is prohibited from submitting an application on behalf of a sponsored facility if the facility is on the National Disqualified List.

(v) The State agency must not approve an application described in paragraphs (e)(1)(iii) and (iv) of this section.

(vi) Once included on the National Disqualified List, an institution, unaffiliated center, or day care home, responsible principal, or responsible individual will remain on the list until the State agency determines that either the serious management problem that led to placement on the National Disqualified List has been corrected or 7 years have elapsed since disqualification from the Program, whichever is longer. Any debt owed under the Program must be repaid.

(2) *National Disqualified List.* FNS will maintain the National Disqualified List and make it available to all State agencies and all sponsoring organizations. This computer matching program uses a Computer Matching Act system of records of information on institutions and individuals who are disqualified from participation in CACFP.

(i) *Placement on the National Disqualified List.* The State agency must provide the following information to FNS for each institution, facility, responsible principal, and responsible individual:

(A) Name and address of the institution, including city, State, and zip code;

(B) Any known aliases;

(C) Termination date;

(D) Amount of debt owed, if any;

(E) Reason, and if other is checked, an explanation, for the;

(F) Date of birth of the responsible principal and responsible individual; and

(G) Position within the institution or facility of the responsible principal and responsible individual.

(ii) *Removal from the National Disqualified List.* An institution, responsible principal and responsible individual disqualified from the Program due to uncorrected serious management problems will remain on the National Disqualified List until the State agency and FNS have determined that the serious management problems are corrected, or for 7 years, whichever is longer. Any debts owed under the Program must be repaid. After an institution, responsible principal or responsible individual has been removed from the National Disqualified List, they will be considered to be in good standing, and eligible to apply for the Program.

(iii) *Early removal of institutions, principals, and individuals from the list.* The State agency must review and approve a request for removal from the National Disqualified List. If the State agency approves the request, and ensures that any debt associated has been paid, it may submit the information to the FNSRO, where it will be reviewed for completeness. The FNSRO will also ensure that the State agency's request is within Program requirements and that the documentation supports the early removal. Once reviewed, the FNSRO will submit the request to the FNSRO for removal. The effective date of removal will be the date on which the FNS National Office processes the removal request. The FNSRO will be notified once the removal has been completed and inform the State agency.

(3) *Computer Matching Act (CMA).* The Computer Matching and Privacy Protection Act addresses the use of information from computer matching programs that involve a Federal System of Records. Address: compliance, matching agreement, and independent verification

(i) Each State agency participating in a computer matching program must comply with the provisions of the Computer Matching Act if it uses an FNS system of records in order to:

(A) Establish eligibility for a Federal benefit program;

(B) Verify eligibility for a Federal benefit program;

(C) Verify compliance with either statutory or regulatory requirements of a Federal benefit program; or

(D) Recover payments or delinquent debts owed under a Federal benefit program.

(ii) State agencies must enter into written agreements with FNS, consistent with 5 U.S.C. 552a(o) of the Computer

Matching Act, in order to participate in a matching program involving a FNS Federal system of records. The agreement must include the State agency's independent verification requirements.

(iii) State agencies are prohibited from taking any adverse action to terminate, deny, suspend, or reduce benefits to an applicant or recipient based on information produced by a Federal computer matching program that is subject to the requirements of the Computer Matching Act, unless:

(A) The information has been independently verified by the State agency; and

(B) FNS has waived the two-step independent verification and notice requirement.

(iv) A State agency that receives a request for verification from another State agency or from FNS must provide the necessary verification. The State agency must respond within 20 calendar days of receiving the request.

(v) A State agency may use the record of a certified notice to independently verify the accuracy of a computer match.

(f) *Suspension—(1) Public health or safety.* If State or local health or licensing officials have cited an institution, day care home or unaffiliated center for serious health or safety violations, Program participation must be immediately suspended prior to any formal action to revoke the institution, day care home or unaffiliated center's licensure or approval. If the State agency or sponsoring organization determines that there is an imminent threat to the health or safety of participants, or that there is a threat to public health or safety, the appropriate State or local licensing and health authorities must immediately be notified and take action that is consistent with the recommendations and requirements of those authorities. The State agency or sponsoring organization must initiate action for termination and disqualification.

(i) Notification procedures for institutions engaging in activities that threaten public health or safety or pose an imminent threat to the health or safety of participants:

(A) *Notice of suspension, proposed termination, and proposed disqualification.* The State agency must

notify the institution's executive director and chairman of the board of directors that the institution's participation (including Program payments) has been suspended and that the State agency proposes to terminate the institution's agreement and to disqualify the institution and the

responsible principals and responsible individuals. The notice must also identify the responsible principals and responsible individuals and must be sent to those persons as well. At the same time this notice is sent, the State agency must add the institution and the responsible principals and responsible individuals to the State agency list, along with the basis for the suspension and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

(1) That the State agency is suspending the institution's participation (including Program payments), proposing to terminate the institution's agreement, and proposing to disqualify the institution and the responsible principals and responsible individuals;

(2) The basis for the suspension;

(3) That, if the institution voluntarily terminates its agreement with the State agency after having been notified of the proposed termination, the institution and the responsible principals and responsible individuals will be disqualified;

(4) The procedures for seeking a fair hearing (consistent with paragraph (g) of this section) of the suspension, proposed termination, and proposed disqualifications; and

(5) That, if the suspension review official overturns the suspension, the institution may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

(B) *Notice of agreement termination, serious deficiency and disqualifications.* When time for requesting a fair hearing expires or when the hearing official upholds the State agency's proposed termination and disqualifications, the State agency must:

(1) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's agreement has been terminated and that the institution and the responsible principals and responsible individuals have been disqualified;

(2) Update the State agency list at the time such notice is issued; and

(3) Provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

(ii) Notification procedures for day care homes and unaffiliated centers engaging in activities that threaten public health or safety or pose an imminent threat to the health or safety of participants:

(A) *Notice of suspension, proposed termination, and proposed disqualification.* The sponsoring organization must notify the day care home provider or the unaffiliated center's principals that the day care home or unaffiliated center's participation (including Program payments) has been suspended and that the sponsoring organization proposes to terminate the day care home or unaffiliated center's agreement and to disqualify the day care home or unaffiliated and its principals. The notice must also identify the principals. At the same time this notice is sent, the sponsoring organization must also provide a copy of the notice to the State agency. The notice must also specify:

(1) That the sponsoring organization is suspending the day care home or unaffiliated center's participation (including Program payments), proposing to terminate the institution's agreement, and proposing to disqualify the day care home or unaffiliated center and its principals;

(2) The basis for the suspension;

(3) That, if the day care home or unaffiliated center voluntarily terminates its agreement with the State agency after having been notified of the proposed termination, the day care home or unaffiliated center and its principals will be disqualified;

(4) The procedures for seeking a fair hearing (consistent with paragraph (g) of this section) of the suspension, proposed termination, and proposed disqualifications; and

(5) That, if the suspension review official overturns the suspension, the day care home or unaffiliated center may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

(B) *Notice of agreement termination, serious deficiency and disqualifications.* When time for requesting a fair hearing expires or when the hearing official upholds the sponsoring organization's proposed termination and disqualifications, the sponsoring organization must:

(1) Notify the day care home provider or unaffiliated center and its principals, that the day care home or unaffiliated center's agreement has been terminated and that the day care home or unaffiliated center and its principals have been disqualified; and

(2) Provide a copy of the notice to the State agency.

(2) *Submission of a false or fraudulent claim for reimbursement.* If the State agency determines that an institution has knowingly submitted a false or fraudulent claim, the State agency must

initiate action to suspend the institution's participation and must initiate action to terminate the institution's agreement and initiate action to disqualify the institution and the responsible principals and responsible individuals. The following procedures must be used to issue a notice of proposed suspension of participation at the same time it issues a notice of proposed termination, which must include the following information:

(i) *Notice of proposed suspension of participation.* The State agency must notify the institution's executive director and chairman of the board of directors that the State agency proposes to suspend the institution's participation, including Program payments. At the same time this notice is sent, the State agency must add the institution and the responsible principals and responsible individuals to the State agency list, along with the basis for the suspension and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

(A) That the State agency is proposing to suspend the institution's participation;

(B) The basis for the suspension;

(C) That, if the institution voluntarily terminates its agreement with the State agency after having been notified of the proposed termination, the institution and the responsible principals and responsible individuals will be disqualified;

(D) The procedures for seeking a fair hearing (consistent with paragraph (g) of this section) of the suspension, proposed termination, and proposed disqualifications;

(E) The effective date of the suspension (which may be no earlier than 10 days after the institution receives the suspension notice);

(F) The name, address and telephone number of the suspension review official who will conduct the suspension review; and

(G) That if the institution intends to request a suspension review, it must submit the request a written documentation opposing the proposed suspension to the suspension review official within 10 days of the institution's receipt of the notice.

(ii) *Maximum time for suspension.* Under no circumstances may the suspension of participation remain in effect for more than 120 days following the suspension review decision.

(iii) *Notice of suspension, proposed termination, and proposed disqualification.* The State agency must notify the institution's executive director and chairman of the board of directors that the institution's

participation (including Program payments) has been suspended and that the State agency proposes to terminate the institution's agreement and to disqualify the institution and the responsible principals and responsible individuals. The notice must also identify the responsible principals and responsible individuals and must be sent to those persons as well. At the same time this notice is sent, the State agency must add the institution and the responsible principals and responsible individuals to the State agency list, along with the basis for the suspension and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

(A) That the State agency is suspending the institution's participation (including Program payments), proposing to terminate the institution's agreement, and proposing to disqualify the institution and the responsible principals and responsible individuals;

(B) The basis for the suspension;

(C) That, if the institution voluntarily terminates its agreement with the State agency after having been notified of the proposed termination, the institution and the responsible principals and responsible individuals will be disqualified;

(D) The procedures for seeking a fair hearing of the suspension, proposed termination, and proposed disqualifications as described in paragraph (g) of this section; and

(E) That, if the suspension review official overturns the suspension, the institution may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

(iv) *Notice of agreement termination, serious deficiency and disqualifications.* When time for requesting a fair hearing expires or when the hearing official upholds the State agency's proposed termination and disqualifications, the State agency must:

(A) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's agreement has been terminated and that the institution and the responsible principals and responsible individuals have been disqualified;

(B) Update the State agency list at the time such notice is issued; and

(C) Provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

(g) *Fair hearing*—(1) *Right to a fair hearing.* (i) The institution must be advised in writing of the grounds upon which the State agency based the action and its right to a fair hearing. The State agency must offer a fair hearing in the notice to the institution of any of the following actions:

(A) Denial of a new institution's application for participation (see § 226.6(b)(1) on the State agency review of a new institution's application; and § 226.6(c)(1), on the State agency's denial of new institution's application);

(B) Denial of an application submitted by a sponsoring organization on behalf of a facility;

(C) Proposed termination of an institution's agreement (see paragraph (a)(6)(ii)(B) of this section, dealing with proposed termination of agreements and paragraph (f) of this section dealing with proposed termination of agreements for suspended institutions);

(D) Suspension of an institution's participation (see paragraph (f) of this section, dealing with suspension for health or safety reasons or submission of a false or fraudulent claim);

(E) Denial of an institution's application for start-up or expansion payments (§ 226.7(h));

(F) Denial of a request for an advance payment (see § 226.10(b));

(G) Recovery of all or part of an advance in excess of the claim for application period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments (see § 226.10(b)(3)); or

(H) Denial of all or part of an institution's claim for reimbursement (except for denial based on a late submission under § 226.10(e)) (see §§ 226.10(f) and 226.14(a));

(I) Decision by the State agency to not forward to FNS an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim (§ 226.10(e));

(J) Demand for the remittance of an overpayment (see § 226.14(a)); and

(K) Any other action of the State agency affecting an institution's participation of its claim for reimbursement.

(ii) The facility must be advised in writing of the grounds upon which the sponsoring organization based the action and its right to a fair hearing. The State agency or sponsoring organization must offer a fair hearing for proposed termination or suspension. A fair hearing for any other action is not required.

(iii) The notice of due process must inform the institution or facility of:

(A) The action that is taken or proposed to be taken;

(B) The legal basis for the action;

(C) The right to appeal the action; and

(D) The procedures and deadlines for requesting an appeal of the action.

(iv) If a fair hearing is requested:

(A) The State agency must continue to pay any valid claims for reimbursement of eligible meals served and allowable administrative expenses incurred until the hearing official issues a decision.

(B) Any information upon which the State agency or sponsoring organization based its action must be available to the appellants for inspection from the date of receipt of the hearing request.

(C) Appellants may request a fair hearing in person or by submitting written documentation to the hearing official.

(D) Appellants may represent themselves, retain legal counsel, or be represented by another person.

(E) All parties must submit written documentation to the hearing official prior to the beginning of the hearing, within 30 days after receiving the notice of action.

(F) Appellants must be permitted to contact the hearing official directly.

(2) *Fair hearing procedures.* A hearing must be held by the fair hearing official in addition to, or in lieu of, a review of written information only if the institution, facility or the responsible principals and responsible individuals request a hearing in the written request for a fair hearing. If the institution's representative, facility's representative, or the responsible principals or responsible individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the hearing official, unless the hearing official agrees to reschedule the hearing. A representative of the State agency must be allowed to attend the hearing to respond to the testimony of the institution and the responsible principals and responsible individuals and to answer questions posed by the hearing official. If a hearing is requested, the institution, the responsible principals, and responsible individuals, and the State agency must be provided with at least 10 calendar days advance notice of the time and place of the hearing.

(i) The purpose of the hearing is to determine that the State agency or sponsoring organization followed Program requirements.

(ii) The hearing official's decisions should be limited to that purpose.

(iii) The purpose is not to determine whether to uphold the legality of Federal or State Program requirements.

(iv) The request for a fair hearing must be submitted in writing no later than 15

calendar days after the date the notice of action is received. The State agency or sponsoring organization must acknowledge the request for a fair hearing within 10 calendar days of its receipt of the request. The State agency must provide a copy of the written request for a fair hearing, including the date of receipt of the request to FNS within 10 calendar days of its receipt of the request.

(3) *Hearing officials.* The individual who is appointed to conduct the fair hearing, including any State agency or sponsoring organization employee or contractor, must be independent and impartial. The institution, facility, responsible principals and responsible individuals must be permitted to contact the hearing official directly if they so desire. The State agency or sponsoring organization must ensure that the hearing official:

(i) Has no involvement in the action under appeal;

(ii) Does not occupy a position that may potentially be subject to undue influence from any party that is responsible for the action under appeal;

(iii) Does not occupy a position that may exercise undue influence on any party that is responsible for the action under appeal;

(iv) Has no personal interest in the outcome of the fair hearing;

(v) Has no financial interest in the outcome of the fair hearing.

(4) *Basis for decision.* The hearing official must render a decision that is based on:

(i) The determination that the State agency or sponsoring organization followed Program requirements;

(ii) The information provided by the State agency, institution, responsible principals, and responsible individual; and

(iii) The Program requirements established in Federal and State laws, regulations, policies, and procedures.

(5) *Final decision.* The hearing official's decision is the final action in the appeal process.

(i) Within 60 calendar days of the State agency's receipt of the request for a fair hearing, the fair hearing official must inform the State agency, the institution's executive director and chair of the board of directors, and the responsible principals and responsible individuals, of the fair hearing's outcome.

(ii) The hearing official must inform the sponsoring organization and the facility of the outcome within the period of time specified in the State agency or sponsoring organization's fair hearing procedures. This timeframe is an administrative requirement for the State

agency or sponsoring organization, and may not be used as a basis for overturning a termination if a decision is not made within the specified timeframe.

(iii) The hearing official must render a decision within 60 calendar days of the date the State agency received the appeal request.

(iv) The hearing official must inform the State agency, institution, responsible principals, and responsible individuals of the decision within this 60-day period.

(v) This timeframe is a requirement and cannot be used to justify overturning the State agency or sponsoring organization's action if a decision is not made within the 60-day period.

(vi) 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 (h)(4) of this section.

(vii) The hearing official's decision is final.

(viii) The decision is not subject to appeal.

(6) *Provision of fair hearing procedures.* The State agency or sponsoring organization's fairing hearing procedures must be provided:

(i) Annually to all institutions, day care homes and unaffiliated centers;

(ii) To an institution, to each responsible principal and responsible individual, to a day care home or unaffiliated center when the State agency or sponsoring organization takes any action subject to a fair hearing; and

(iii) Any other time upon request.

(7) *Effect of State agency action.* The State agency's action must remain in effect during the fair hearing. The effect of this requirement on particular State agency actions is as follows:

(i) *Overpayment demand.* During the period of the fair hearing, the State agency is prohibited from taking action to collect or offset the overpayment. However, the State agency must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the State agency's action.

(ii) *Recovery of advances.* During the fair hearing, the State agency must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

(h) *Payments—(1) Payment of valid claims.* If the State agency holds an

agreement with an institution that is proposed to be terminated, the State agency must continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until the agreement is terminated, as described in paragraphs (a)(6)(ii) and (iii) of this section, including the period of any fair hearing, unless participation has been suspended.

(2) *Suspension of payments.* The State agency is prohibited from paying any claims for reimbursement submitted by a suspended institution.

(i) If the suspended institution prevails in the fair hearing of the proposed termination, the State agency must pay any claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

(ii) If the institution suspended for the submission of false or fraudulent claims is a sponsoring organization, the State agency must ensure that sponsored facilities continue to receive reimbursement for eligible meals served during the suspension period. If the suspended institution prevails in the fair hearing of the proposed termination, the State agency must pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

(3) *Debts owed to the Program.* The State agency is responsible for the collection of unearned payments, including any assessment of interest, as described in § 226.14(a).

(i) After the State agency has sent the necessary demand letter for debt collection, State agency staff must refer the claim to the appropriate State authority for pursuit of the debt payment.

(ii) FNS defers to the State's laws and procedures to establish a repayment plan to recover funds as quickly as possible.

(iii) It is the responsibility of the State agency to notify the institution that interest will be charged. Interest must be assessed on institutions' debts established on or after July 29, 2002. Interest will continue to accrue on debts not paid in full within 30 days of the initial demand for remittance up to the date of payment, including during an extended payment plan and each month while on the National Disqualified List.

(iv) State agencies are required to assess interest using one uniform rate. The appropriate rate to use is the Current Value of Funds Rate, which is published annually by Treasury in the **Federal Register** and is available from the FNSRO.

(4) *State liability for payment.* (i) A State agency that fails to meet the 60-day timeframe set forth in paragraph (g)(5)(i) 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.

(i) *FNS determination of serious management problems.* (1) *General.* FNS may determine independently that an institution has one or more serious management problems, as described in paragraph (a) of this section. FNS will follow procedures outlined in this section to address any finding that prevents an institution from meeting the Program's performance standards, affects the integrity of a claim for reimbursement, or affects the integrity of the meals served in a day care home or unaffiliated center.

(2) *Required State agency action—(i) Termination of agreements.* If the State agency holds an agreement with an institution that FNS determines to be seriously deficient and subsequently disqualifies, the State agency must terminate the institution's agreement effective no later than 45 days after the date of the institution's disqualification by FNS. As noted in paragraph (g) of this section, the termination of an agreement for this reason is not subject to a fair hearing. At the same time the notice of termination is issued, the State agency must add the institution to the State agency list and provide a copy of the notice to the appropriate FNSRO.

(ii) *Disqualified responsible principal and individuals.* If the State agency holds an agreement with an institution whose principal FNS determines to be seriously deficient and subsequently disqualifies, the State agency must initiate action to terminate and disqualify the institution in accordance with the procedures in paragraph (a)(6)(ii)(B) of this section. The State agency must initiate these actions no

later than 45 days after the date of the principal's disqualification by FNS.

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**Cynthia Long,**

*Administrator, Food and Nutrition Service.*

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