

Regulation Changes Due to the Program Integrity Rule

Schools Program Changes (NSLP and SBP) Provisions

Discretion in Taking Fiscal Action for Meal Pattern Violations

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>Current regulations at 7 CFR 210.18(l)(2) require State agencies to take fiscal action to recover Federal funds from SFAs for repeated violations of milk type and vegetable subgroup requirements.</p>	<p>Amends 7 CFR 210.18(l)(2) to give State agencies the discretion to take fiscal action against SFAs for repeated violations of milk type and vegetable subgroup requirements.</p> <p>7 CFR 210.18(l)(2) <i>Performance Standard 2 violations</i>. Fiscal action for Performance Standard 2 violations applies as follows:</p> <ul style="list-style-type: none">(ii) For repeated violations involving food quantities, whole grain-rich foods, milk type, and vegetable subgroups cited under paragraph (g)(2) of this section, the State agency has discretion to apply fiscal action as follows:<ul style="list-style-type: none">(A) If the meals contain insufficient quantities of the required food components, the affected meals may be disallowed and reclaimed;(B) If no whole grain-rich foods are offered during the week of review, meals for up to the entire week of review may be disallowed and reclaimed;(C) If insufficient whole grain-rich foods are offered during the week of review, meals for up to the	<p>September 22, 2023</p>

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	<p>entire week of review may be disallowed and reclaimed.</p> <p>(D) If an unallowable milk type is offered, or no milk variety is offered, the deficient meals may be disallowed and reclaimed.</p> <p>(E) If one vegetable subgroup is not offered over the course of the week of review, meals for up to the entire week of review may be disallowed and reclaimed.</p> <p>(F) If a weekly vegetable subgroup is offered in insufficient quantity to meet the weekly vegetable subgroup requirement, meals for one day of the week of review may be disallowed and reclaimed.</p> <p>(G) If the amount of juice offered exceeds the weekly limitation, meals for up to the entire week of review may be disallowed and/or reclaimed.</p> <p>(iii) For repeated violations of calorie, saturated fat, sodium, and trans fat dietary specifications cited under paragraph (g)(2) of this section, the State agency has discretion to apply fiscal action to the reviewed school as follows:</p> <p>(A) If the average meal offered over the course of the week of review does not meet one of the dietary specifications, meals for the entire week of review may be disallowed and reclaimed; and</p> <p>(B) Fiscal action is limited to the school selected for the targeted menu review and must be supported by a</p>	

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	nutrient analysis of the meals at issue using USDA-approved software.	

Return to a 5-Year Review Cycle

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<p>Current regulations at 7 CFR 210.18(c) require State agencies to conduct a comprehensive administrative review of each SFA participating in NSLP and SBP at least once during a 3-year cycle.</p>	<p>Amends 7 CFR 210.18(c) and allows State agencies to implement a 5-year administrative review cycle, while targeting additional oversight to those SFAs most high risk.</p> <p>7 CFR 210.18(c) <i>Review cycle</i>. State agencies must conduct administrative reviews of all school food authorities participating in the National School Lunch Program (including Afterschool Snacks and the Seamless Summer Option) and School Breakfast Program at least once during a 5-year review cycle, provided that each school food authority is reviewed at least once every 6 years, or every 4 or 5 years depending on if a shorter review cycle is observed. At a minimum, the on-site portion of the administrative review must be completed during the school year in which the review began.</p> <p>(1) <i>Targeted follow-up reviews</i>. A State agency that reviews school food authorities on a cycle longer than 3 years must identify school food authorities that are high-risk to receive a targeted follow-up review. A State agency must develop and receive FNS approval of a plan to identify school food authorities that meet the high-risk criteria.</p>	<p>July 1, 2024</p>

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	<p>(2) <i>High-risk criteria for targeted follow-up reviews.</i> At a minimum, a State plan should identify as high-risk those school food authorities that during the most recent administrative review conducted in accordance with 210.18 had one or more of the following risk factors as determined by the State Agency: a 10 percent or greater certification and benefit issuance error rate; incomplete verification for the review year; or one or more significant or systemic errors in Performance Standard 1 as defined at 210.18(g)(1), Performance Standard 2 as defined at 210.18(g)(2), or allowable costs.</p> <p>(3) <i>Timing and scope of targeted follow-up reviews.</i> Within two years of the review, high-risk school food authorities must receive a targeted follow-up review. Targeted follow-up reviews must include the areas of significant or systemic error identified in the previous review, and may include other areas at the discretion of the State agency. The State agency may conduct targeted follow-up reviews in the same school year as the administrative review, and may conduct any additional reviews at its discretion.</p> <p>Also amends 7 CFR 210.19(a)(5) to allow State agencies to conduct the FSMC review on a 5-year cycle to align with the administrative review cycle.</p> <p>7 CFR 210.19(a)(5) <i>Food service management companies.</i></p> <p>(i) The State agency must annually review and approve each contract and contract amendment, including all supporting documentation, between any school food authority and food service management company before implementation of the contract by either party to</p>	

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	<p>ensure compliance with all the provisions and standards set forth in this part.</p> <p>(A) When the State agency develops a prototype contract for use by the school food authority that meets the provisions set forth in this part, this annual review may be limited to changes made to that contract.</p> <p>(B) The State agency may establish due dates for submission of the contract or contract amendment documents.</p> <p>(ii) The State agency must perform a review of each school food authority that contracts with a food service management company, at least once during each 5-year period. The reviews must examine the school food authority's compliance with §210.16 of this part.</p> <p>(iii) The State agency may require all food service management companies to register with the State agency prior to contracting for food service with any school food authority in the State.</p> <p>210.19(a)(5)(iii) State agencies must provide assistance to school food authorities upon request to assure compliance with the requirements for contracting with a food service management company.</p> <p>Does not make any changes to the oversight of FSMCs, including the requirement for State agencies to review each contract between an SFA and FSMC annually. State agencies may continue with a shorter FSMC review cycle if they wish to do so.</p>	

Substitution of Local-level Audits

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>The State agency may use recent or current applicable findings from Federally-required audit activity or State imposed audit requirements to prevent duplication of effort. These findings may only pertain to reviewed school(s) or the operation of the school food authority during the review period per <i>210.18(f)(3)</i>.</p>	<p>Amends 7 CFR 210.18(f)(3) to allow State agencies, with FNS approval, to use information from local-level audits to substitute for related parts of the administrative review. Requiring FNS approval will ensure that the local-level audit aligns with Federal audit standards.</p> <p><i>210.18(f)(3) Audit results.</i> The State agency may use any recent and currently applicable results from Federal, State, or local audit activity to meet FNS monitoring requirements. Such results may be used only when they pertain to the reviewed school(s) or the overall operation of the school food authority, when they are relevant to the review period, and when they adhere to audit standards contained in 2 CFR part 200, subpart F. The State agency must document the source and the date of the audit. The content of local level audits activity requires the approval of FNS to ensure that these audits align with Federal audit standards.</p>	<p>July 1, 2024</p>

Completion of Review Requirements Outside of the Administrative Review

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>An administrative review for the National School Lunch Program and the School Breakfast Program requires the State agency to monitor critical and general areas per 7 CFR 210.18(f), 210.18(g) and 210.18(h). Additional areas may be reviewed with FNS approval.</p>	<p>Allows State agencies, with FNS approval, to omit specific, redundant areas of the administrative review, when sufficient oversight is conducted outside of the administrative review. Each of these State agencies must submit a plan, for FNS approval, that describes the State</p>	<p>July 1, 2024</p>

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	<p>agency's specific oversight activities and the critical or general areas of review that would be replaced. State agencies must submit updates or additions to their plan for FNS approval.</p> <p>210.18(f) <i>Scope of review.</i> During the course of an administrative review for the National School Lunch Program and the School Breakfast Program, the State agency must monitor compliance with the critical and general areas in paragraphs (g) and (h) of this section, respectively. Selected critical and general areas must be monitored when reviewing the National School Lunch Program's Afterschool Snacks and the Seamless Summer Option, the Special Milk Program, and the Fresh Fruit and Vegetable Program, as applicable and as specified in the <i>FNS Administrative Review Manual</i>. State agencies may add additional review areas with FNS approval.</p> <p>210.18(g) <i>Critical areas of review.</i> The performance standards listed in this paragraph are directly linked to meal access and reimbursement, and to the meal pattern and nutritional quality of the reimbursable meals offered. These critical areas must be monitored by the State agency when conducting administrative reviews of the National School Lunch Program and the School Breakfast Program. Selected aspects of these critical areas must also be monitored, as applicable, when conducting administrative reviews of the National School Lunch Program's Afterschool Snacks and the Seamless Summer Option, and of the Special Milk Program. State agencies may omit designated critical areas of review, in part or entirely, where school food authority or State agency has implemented FNS-</p>	

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	<p>specified error reduction strategies or utilized FNS-specified monitoring efficiencies.</p> <p>210.18(h) <i>General areas of review.</i> The general areas listed in this paragraph reflect requirements that must be monitored by the State agency when conducting administrative reviews of the National School Lunch Program and the School Breakfast Program. Selected aspects of these general areas must also be monitored, as applicable and as specified in the FNS Administrative Review Manual, when conducting administrative reviews of the National School Lunch Program's Afterschool Snacks and Seamless Summer Option, the Fresh Fruit and Vegetable Program, and the Special Milk Program. State agencies may omit designated general areas of review, in part or entirely, where the school food authority or State agency has implemented FNS-specified error reduction strategies or utilized FNS-specified monitoring efficiencies. State agencies may omit designated general areas of review, in part or entirely, where the school food authority or State agency has implemented FNS-specified error reduction strategies or utilized FNS-specified monitoring efficiencies.</p>	

Framework for Integrity Focused Process Improvements

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
N/A	Allow State agencies to omit designated areas of review, in part or entirely, where a State agency or SFA has	September 22, 2023

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	<p>implemented FNS-specified error reduction strategies or utilized FNS-specified monitoring efficiencies.</p> <p>FNS intends to develop guidance and a series of FNS-approved optional process reforms that respond to the latest findings from USDA research, independent audits, and FNS analysis of administrative data that State agencies and SFAs may adopt.</p>	

Assessment of Resource Management Risk

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>State agencies were required to conduct off-site assessments of the school food authority's nonprofit school food service to evaluate the risk of noncompliance with resource management requirements. If the school food authority is deemed high risk for noncompliance, the State agency must conduct a comprehensive review per 7 CFR 210.18(h)(1).</p>	<p>Allow State agencies to conduct the assessment of an SFA's nonprofit school food service account at any point in the review process. Similar to the on-site portion of the review, FNS will no longer require that this assessment take place off-site before the administrative review.</p> <p>Removes the words off-site from the regulations.</p> <p>210.18(h)(1) <i>Resource management</i>. The State agency must conduct an assessment of the school food authority's nonprofit school food service account to evaluate the risk of noncompliance with resource management requirements. If risk indicators show that the school food authority is at high risk for noncompliance with resource management requirements, the State agency must conduct a comprehensive review including, but not limited to, the following areas using procedures specified in the FNS <i>Administrative Review Manual</i>.</p>	<p>September 22, 2023</p>

Buy American Area of Review

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
N/A	<p>Requires State agencies to ensure compliance with the Buy American requirements to purchase domestic commodities or products. This final rule also makes a corresponding technical change to the definition of “General areas” under 7 CFR 210.18(b).</p> <p>210.18(h)(2)(xi) Buy American. The State agency must ensure that the school food authority complies with the Buy American requirements set forth in §210.21(d) and 7 CFR 220.16(d), as specified in the FNS Administrative Review Manual.</p> <p>General Areas means the areas of review specified in paragraph (h) of this section. These areas include free and reduced-price process, civil rights, school food authority on-site monitoring, reporting and recordkeeping, food safety, competitive food services, water, program outreach, resource management, Buy American, and other areas identified by FNS.</p>	September 22, 2023

School Food Authority Contracts with Food Service Management Companies

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
Contracts according to 210.16(c) must include that the food service management company maintain records to support its Claim for Reimbursement as well as have any State or local health certification for facilities outside of the school it	Note: This rule does not finalize the requirement for fixed price contracts with FSMCs. Cost-reimbursable contracts remain allowable.	August 23, 2024

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<p>proposes to prepare meals and ensure payments are not made for meals that do not meet the requirements of the contract.</p> <p>State agencies are currently required to annually review each contract between school food authorities and food service management companies per 210.19(a)(5) Food service management companies. This ensured compliance with all provisions and standards prior to execution of an amended contract by either party.</p>	<p>Amends 7 CFR 210.2 and 220.2 to define fixed-price contract in NSLP and SBP.</p> <p>210.2 and 220.2 <i>Definitions</i>.</p> <p><i>Fixed-price contract</i> means a contract that charges a fixed cost per meal, or a fixed cost for a certain time period. Fixed-price contracts may include an economic price adjustment tied to a standard index.</p> <p>Amends 7 CFR 210.19(a)(5) to require each State agency to annually review—and approve—each contract and contract amendment between any SFA and FSMC, for consistency with 7 CFR 210.16(a)(10).</p> <p>210.19(a)(5) <i>Food service management companies</i>.</p> <p>(i) The State agency must annually review and approve each contract and contract amendment, including all supporting documentation, between any school food authority and food service management company before implementation of the contract by either party to ensure compliance with all the provisions and standards set forth in this part.</p> <p>(A) When the State agency develops a prototype contract for use by the school food authority that meets the provisions set forth in this part, this annual review may be limited to changes made to that contract.</p> <p>(B) The State agency may establish due dates for submission of the contract or contract amendment documents.</p>	

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
	<ul style="list-style-type: none"> (i) The State agency must perform a review of each school food authority that contracts with a food service management company, at least once during each 5-year period. The reviews must examine the school food authority's compliance with §210.16 of this part. (ii) The State agency may require all food service management companies to register with the State agency prior to contracting for food service with any school food authority in the State. (iii) State agencies must provide assistance to school food authorities upon request to assure compliance with the requirements for contracting with a food service management company. <p>Adds 7 CFR 210.16(c)(4) and 220.7(d)(3)(iv) to require the value of USDA Foods to accrue only to the benefit of the SFA's nonprofit school food service, to align with 7 CFR 210.16(a)(6).</p> <p>210.16(c)(4) Provisions in part 250, subpart D of this chapter must be included to ensure the value of donated foods, i.e., USDA Foods, are fully used in the nonprofit food service and credited to the nonprofit school food service account.</p> <p>220.7(d)(3)(iv) Provisions in part 250, subpart D of this chapter must be included to ensure the value of donated foods, i.e., USDA Foods, are fully used in the nonprofit food service and credited to the nonprofit school food service account.</p>	

Annual NSLP Procurement Training

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
N/A	<p>Requires State directors of school nutrition programs, State directors of distributing agencies, and school nutrition program directors, management, and staff who work on NSLP procurement activities to complete procurement training annually.</p> <p>Adds new paragraphs at 7 CFR 210.21(h), 210.30(g)(3), and 235.11(h)(3).</p> <p>Amends 7 CFR 210.30 and 235.11 to clarify that NSLP procurement training is subject to professional standards monitoring and recordkeeping requirements and may count towards the professional standards training requirements.</p> <p>This requirement only applies to State directors and school nutrition program directors, management, and staff who work on NSLP procurement activities.</p> <p>210.21(h) Procurement training.</p> <p>(1) State directors of school nutrition programs, State directors of distributing agencies, and school nutrition program directors, management, and staff tasked with National School Lunch Program procurement responsibilities must complete annual training on Federal procurement standards annually.</p> <p>(2) Procurement training may count towards the professional standards training standards at §210.30(g) of this part and §235.11(h) of this chapter.</p> <p>(3) State agencies and school food authorities must</p>	August 23, 2024

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	<p>retain records to document compliance with the requirement in this section.</p> <p>210.30(g)(3) Each employee tasked with Program procurement has completed annual procurement training, as required under §210.21(h) of this part, by the end of each school year.</p> <p>235.11(h)(3) <i>Continuing education and training standards for State directors of school nutrition programs and distributing agencies.</i> Each school year, all State directors with responsibility for the National School Lunch Program under part 210 of this chapter and the School Breakfast Program under part 220 of this chapter, as well as those responsible for the distribution of USDA donated foods under part 250 of this chapter, must complete a minimum of 15 hours of training in core areas that may include nutrition, operations, administration, communications and marketing. State directors tasked with National School Lunch Program procurement responsibilities must complete annual procurement training, as required under §210.21(h) of this chapter. Additional hours and topics may be specified by FNS, as needed, to address Program integrity and other critical issues.</p>	

Reduce Performance Based Reimbursement Reporting

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>Require State agencies to submit to FNS a quarterly report per 7 CFR 210.5(d)(2) detailing the total number of SFAs in the State and the names of SFAs that are certified to receive the statutorily established 8-cents performance-based reimbursement.</p>	<p>Amends 7 CFR 210.5(d) to reduce the performance-based reimbursement reporting requirement from quarterly to annually. This rulemaking moves the performance-based reimbursement report from the quarterly report under paragraph (d)(2) to the end-of-the-year report.</p> <p>7 CFR 210.5(d)(2) Quarterly report. Each State agency administering the National School Lunch Program must submit to FNS a quarterly Financial Status Report (FNS-777) on the use of Program funds. Such reports must be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter.</p>	<p>Annual report will be due Oct 30, 2024</p>

CACFP Provision Changes

State Agency Review Requirements in CACFP

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>Current regulations at 7 CFR 226.6(m) require State agencies to annually review at least a third (33.3 percent) of all institutions participating in the CACFP in each State. Independent centers must be reviewed at least once every 3 years. Sponsoring organizations with up to 100 facilities must also be reviewed at least once every 3 years. Sponsoring organizations with more than 100 facilities must be reviewed at least once every 2 years. New sponsoring organizations with five or more facilities must be reviewed within the first 90 days of operation.</p>	<p>As required by statute establishes additional priorities and criteria for State agencies to use in selecting institutions for review.</p> <p>Amends 7 CFR 226.6(m)(6) to require the State agency to schedule reviews at least once every 2 years for institutions that sponsor more than 100 facilities, engage in activities other than CACFP, have had serious management problems in previous reviews, or are at risk of having serious management problems.</p> <p><i>7 CFR 226.6(m)(6) Frequency and number of required institution reviews.</i> The State agency must annually review at least 33.3 percent of all institutions. At least 15 percent of the total number of facility reviews required must be unannounced. The State agency must review institutions according to the following schedule:</p> <ul style="list-style-type: none"> (i) At least once every 3 years, independent centers and sponsoring organizations of 1 to 100 facilities must be reviewed. A sponsoring organization review must include reviews of 10 percent of the sponsoring organization's facilities. (ii) At least once every 2 years, sponsoring organizations that operate more than 100 facilities, that conduct activities other than CACFP, that have been identified during a recent review as having serious management 	<p>August 23, 2024</p>

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	<p>problems, or that are at risk of having serious management problems must be reviewed. These reviews must include reviews of 5 percent of the sponsoring organization's first 1,000 facilities and 2.5 percent of the sponsoring organization's facilities in excess of 1,000.</p> <p>(iii) At least once every 2 years, independent centers that conduct activities other than CACFP, that have been identified during a recent review as having serious management problems, or that are at risk of having serious management problems must be reviewed.</p> <p>(iv) New sponsoring organizations that operate five or more facilities must be reviewed within the first 90 days of Program operations.</p>	

State Liability for Payments to Aggrieved Child Care Institutions

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>Current regulations at 7 CFR 226.6(k) require the State agency to acknowledge an institution's request for an administrative review within 10 days of its receipt of the request. Within 60 days of the State agency's receipt of the request, the administrative review official must inform the State agency, the institution's executive director, chair of the board of directors, responsible principals, and responsible individuals of the administrative review's outcome. During this period, all valid claims for reimbursement must be paid to the institution and the</p>	<p>Consistent with statute, this final rule requires State agencies to provide fair and timely hearings through the serious deficiency process. It also requires a State agency to pay all valid claims for reimbursement, from non-Federal sources, if the 60-day timeframe for the fair hearing is not met.</p> <p>Amends 7 CFR 226.6(k) to establish State liability for payments to aggrieved child care institutions. It requires the State agency to pay all valid claims with non-Federal funds if</p>	<p>August 23, 2024</p>

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<p>facilities of the institution, unless there is an allegation of fraud or a serious health or safety violation against the institution. The claims are paid from Federal funds.</p>	<p>the State agency fails to meet the required timeframe for providing a fair hearing and a prompt determination, unless FNS grants an exception.</p> <p>7 CFR 226.6(k)(5)(ii) <i>Time to request administrative review.</i> The request for administrative review must be submitted in writing not later than 15 days after the date the notice of action is received, and the State agency must acknowledge the receipt of the request for an administrative review within 10 days of its receipt of the request. The State agency must provide a copy of the written request for an administrative review, including the date of receipt of the request to FNS, within 10 days of its receipt of the request.</p>	

CACFP Audit Funding

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>Section 17(i)(2)(B) of the NSLA, 42 U.S.C. 1766(i)(2)(B), allows additional funding to State agencies to conduct audits. The Secretary may increase the amount of funds to any State agency that demonstrates that it can effectively use the funds to improve program management, under criteria established by the Secretary.</p>	<p>Allows FNS to increase the amount of State audit funds if a State agency demonstrates that it can effectively use the funds to improve program management.</p> <p>Amends 7 CFR 226.4(j) to allow additional CACFP audit funds for State agencies.</p> <p>7 CFR 226.4(j) <i>Audit funds.</i></p> <p>(1) Funds are available to each State agency in an amount equal to 1.5 percent of the Program funds used by the State during the second fiscal year preceding the fiscal year for which these funds are to be made available.</p>	September 22, 2023

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	<p>These funds are for the expense of conducting audits under §226.8 and Program monitoring under §226.6(m).</p> <p>(2) State agencies may request an increase in the amount of funds made available under this paragraph.</p> <ul style="list-style-type: none"> (i) FNS approval for increased funding will be based on the State agency's expressed need for an increase in resources to meet audit requirements, fulfill monitoring requirements, or effectively improve Program management. (ii) The total amount of audit funds made available to any State agency under this paragraph may not exceed 2 percent of Program funds used by the State during the second fiscal year preceding the fiscal year for which the funds are made available. (iii) The amount of assistance provided to a State agency under this paragraph in any fiscal year may not exceed the State's expenditures under §§226.6(m) and 226.8 during the fiscal year in which the funds are made available. <p>FNS now considers requests to increase audit funding from 1.5 percent to a cumulative maximum of 2 percent of CACFP funds used by the State agency during the second preceding fiscal year for the purpose of conducting program audits.</p> <p>The additional funds must be used to meet program oversight and audit requirements under 7 CFR 226.6(m) and 226.8, respectively, or to improve program management under criteria established by the Secretary.</p>	

Financial Review of Sponsoring Organizations in CACFP

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>Current regulations at 7 CFR 226.7(b) require State agencies to monitor and review institutions' documentation of their nonprofit status to ensure all Program reimbursement funds are used solely for the conduct of the food service operation or to improve food service operations.</p>	<p>Amends 7 CFR 226.7(b) to require the State agency to have procedures in place for annually reviewing at least 1 month of the sponsoring organization's bank account activity against other associated records to verify that the financial transactions meet program requirements.</p> <p>The State agency must also have procedures for annually reviewing a sponsoring organization's actual expenditures of CACFP funds and the amount of meal reimbursement funds retained from unaffiliated centers to support the sponsoring organization's administrative costs.</p> <p>The State agency must reconcile reported expenditures with program payments to ensure that funds are accounted for fully.</p> <p>7 CFR 226.7(b) <i>Financial management system</i>. Each State agency must establish and maintain an acceptable financial management system, adhere to financial management standards and otherwise carry out financial management policies in accordance with 2 CFR parts 200, 400, 415, 416, 417, 418, and 421, and FNS Instruction 796-2, as applicable, and related FNS guidance to identify allowable Program costs and establish standards for institutional recordkeeping and reporting. The State agency must provide guidance on financial management requirements to each institution.</p> <p>(1) State agencies must also have a system in place for:</p> <p>(i) Annually reviewing at least 1 month's bank account activity of all sponsoring organizations against</p>	<p>August 23, 2024</p>

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	<p>documents adequate to support that the financial transactions meet Program requirements. The State agency may expand the review to examine additional months of bank account activity if discrepancies are found. If the State agency identifies and is unable to verify any expenditures that have the appearance of violating Program requirements, or if the discrepancy is significant, the State agency must refer the sponsoring organization's bank account activity to the appropriate State authorities.</p> <p>(ii) Annually reviewing actual expenditures reported of Program funds and the amount of meal reimbursement funds retained from centers, if any, for administrative costs for all sponsoring organizations of unaffiliated centers. State agencies must reconcile reported expenditures with Program payments to ensure funds are fully accounted for, and use the reported actual expenditures as the basis for selecting a sample of expenditures for validation. If the State agency identifies and is unable to verify any expenditures that have the appearance of violating Program requirements, the State agency must refer the sponsoring organization's bank account activity to the appropriate State authorities.</p> <p>(iii) Monitoring and reviewing the institutions' documentation of their nonprofit status to ensure that all Program reimbursement funds are used solely for the conduct of the food service operation</p>	

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	<p>or to improve food service operations, principally for the benefit of children or adult participants.</p> <p>(2) The financial management system standards for institutional recordkeeping and reporting must:(i) Prohibit claiming reimbursement for meals provided by a child or an adult participant's family, except as authorized at §§226.18(e) and 226.20(b)(2), (g)(1)(ii), and (g)(2)(ii); and</p> <p>(ii) Allow the cost of meals served to adults who perform necessary food service labor under the Program, except in day care homes.</p> <p>The State agency must also have procedures for annually reviewing a sponsoring organization's actual expenditures of CACFP funds and the amount of meal reimbursement funds retained from unaffiliated centers to support the sponsoring organization's administrative costs.</p> <p>Makes a corresponding change to 7 CFR 226.10(c) to require sponsoring organizations of unaffiliated centers to annually make available to the State agency the amount of program expenditures of program funds and the amount of meal reimbursement funds retained from their centers for administrative costs.</p> <p>7 CFR 226.10(c) Claims for Reimbursement must report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the final Report of the Child and Adult Care Food Program (FNS 44) required under §226.7(d). In submitting a Claim for Reimbursement, each institution</p>	

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	<p>must certify that the claim is correct and that records are available to support that claim.</p> <p>(1) Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization must perform edit checks on each facility's meal claim. At a minimum, the sponsoring organization's edit checks must:</p> <ul style="list-style-type: none"> (i) Verify that each facility has been approved to serve the types of meals claimed; and (ii) Compare the number of children or eligible adult participants enrolled for care at each facility, multiplied by the number of days on which the facility is approved to serve meals, to the total number of meals claimed by the facility for that month. Discrepancies between the facility's meal claim and its enrollment must be subjected to more thorough review to determine if the claim is accurate. <p>(2) Sponsoring organizations of unaffiliated centers must make available to the State agency an annual report detailing actual expenditures of Program funds and the amount of meal reimbursement funds retained from centers, if any, for administrative costs for the year to which the claims apply. The report must use the same cost categories as the approved annual budget submitted by the sponsoring organization.</p> <p>(3) Sponsoring organizations of for-profit child care centers or for-profit outside-school-hours care centers must submit the number and percentage of children in care—</p>	

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	<p>enrolled or licensed capacity, whichever is less—that documents that at least 25 percent are eligible for free or reduced-price meals or are title XX beneficiaries. Sponsoring organizations of such centers must not submit a claim for any for-profit center in which less than 25 percent of the children in <u>care</u>—enrolled or licensed capacity, whichever is less—during the claim month were eligible for free or reduced-price meals or were title XX beneficiaries.</p> <p>(4) For each month they claim reimbursement, independent for-profit child care centers and independent for-profit outside-school-hours care centers must submit the number and percentage of children in care—enrolled or licensed capacity, whichever is less—that documents at least 25 percent are eligible for free or reduced-price meals or are title XX beneficiaries. However, children who only receive at-risk afterschool meals or snacks must not be considered in determining this eligibility.</p> <p>(5) For each month they claim reimbursement, independent for-profit adult day care centers must submit the percentages of enrolled adult participants receiving title XIX or title XX benefits for months in which not less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries. For the claim, sponsoring organizations of adult day care centers must submit the percentage of enrolled adult participants receiving title XIX or title XX benefits for each center. Sponsoring organizations must not submit claims for adult day care centers for months in which less than 25</p>	

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	percent of enrolled adult participants were title XIX or title XX beneficiaries.	

Informal Purchase Methods for CACFP

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<p>7 CFR 226.21 (a) allows CACFP institutions to use the micro-purchase method for transactions in which the aggregate cost of the items purchased does not exceed \$10,000, the current Federal threshold. Institutions may use the small purchase method for purchases below the Federal simplified acquisition threshold, currently set at \$250,000. States and local agencies may specify lower micro-purchase and simplified acquisition thresholds, and local agencies may set a higher micro-purchase thresholds in line with 2 CFR part 200.320(a)(1)(iv-v).</p> <p>7 CFR 226.22 outlines standards and guidelines for the procurement of foods, supplies, equipment, and other goods and services.</p>	<p>Amends 7 CFR 226.21(a) to remove outdated language so that the values of the Federal micro-purchase threshold and Federal simplified acquisition threshold are linked to 2 CFR part 200.</p> <p>7 CFR 226.21(a) Any institution may contract with a food service management company. An institution which contracts with a food service management company must remain responsible for ensuring that the food service operation conforms to its agreement with the State agency. All procurements of meals from food service management companies must adhere to the procurement standards set forth in §226.22 and comply with the following procedures intended to prevent fraud, waste, and Program abuse:</p> <p>This final rule also makes technical changes to remove outdated or duplicative provisions of 7 CFR 226.22 and affirm that procurements by public or private non-profit institutions comply with the appropriate requirements under 2 CFR part 200.</p> <p>7 CFR 226.22 Procurement Standards.</p> <p>(a) <i>General.</i> This section establishes standards and guidelines for the procurement of foods, supplies,</p>	<p>August 23, 2024</p>

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	<p>equipment, and other goods and services. These standards are furnished to ensure that goods and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and Executive orders.</p> <p>(b) <i>Compliance.</i> Institutions may use their own procedures for procurement with Program funds to the extent that:</p> <ul style="list-style-type: none"> (1) Procurements by public institutions comply with applicable State or local laws and standards set forth in 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR parts 400 and 415; and (2) Procurements by private nonprofit institutions comply with standards set forth in 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR parts 400 and 415. <p>226.22(c) <i>Geographic preference.</i></p> <ul style="list-style-type: none"> (1) Institutions participating in the Program may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the institution making the purchase has the discretion to determine the local area to which the geographic preference option will be applied; (2) For the purpose of applying the optional geographic preference in paragraph (c)(1) of this section, “unprocessed locally grown or locally raised agricultural products” means only those 	

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	<p>agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques will not be considered as changing an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.</p>	

Elimination of the Annual Application for Institutions

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>CACFP 19-2011, <i>Child Nutrition Reauthorization 2010: Child and Adult Care Food Program Applications</i>, on April 8, 2011, https://www.fns.usda.gov/cacfp/applications, to provide guidance regarding the HHFKA requirements that renewing institutions must submit an annual certification of information, updated licensing information, and a budget.</p>	<p>This provision has been a standard operating practice for sponsoring organizations and State agencies since 2011.</p> <p>As required by statute, this action amends 7 CFR 226.2, and 226.6(b) to require an initial application for new institutions and annual updates, as needed, for renewing institutions. A corresponding change is made at 7 CFR 226.6(f). This</p>	<p>September 22, 2023</p>

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>7 CFR 226.6(b) requires the State agency to establish application review procedures and determine the eligibility of institutions and facilities submitted by sponsoring organizations and enter into a written agreement.</p> <p>State agencies must require institutions to comply with applicable provisions at 7 CFR 226.6(f) and collect information specified under this regulation.</p>	<p>provision has been a standard operating practice for State agencies since 2011.</p> <p>7 CFR 226.2 amends the definition of 'New institution' to mean a sponsoring organization or an independent center making an application to participate in the Program, or applying to participate in the Program after a lapse in participation.</p> <p>7 CFR 226.2 Definitions.</p> <p><i>New institution</i> means a sponsoring organization or an independent center making an application to participate in the Program or applying to participate in the Program after a lapse in participation.</p> <p>7 CFR 226.6(b) Each State agency must establish application review procedures, as described in paragraph (b)(1) of this section, to determine the eligibility of new institutions and facilities for which applications are submitted by sponsoring organizations. Each State agency must establish procedures for the review of renewal information, as described in paragraph (b)(2) of this section, to determine the continued eligibility of renewing institutions. The State agency must enter into written agreements with institutions, as described in paragraph (b)(4) of this section.</p> <p>7 CFR 226.6(f)(1)(iv) Require each sponsoring organization to submit an administrative budget with sufficiently detailed information concerning projected CACFP administrative earnings and expenses, as well as other non-Program funds to be used in Program administration, for the State agency to determine the allowability, necessity, and reasonableness of all proposed expenditures, and to assess</p>	

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	<p>the sponsoring organization's capability to manage Program funds. The administrative budget must demonstrate that the sponsoring organization will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796-2 (<i>Financial Management - Child and Adult Care Food Program</i>), 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR part 400 and part 415, and applicable Office of Management and Budget circulars. The administrative budget submitted by a sponsoring organization of centers must demonstrate that the administrative costs to be charged to the Program do not exceed 15 percent of the meal reimbursements estimated or actually earned during the budget year, unless the State agency grants a waiver, as described in §226.7(g). For sponsoring organizations of day care homes seeking to carry over administrative funds, as described in §226.12(a)(3), the budget must include an estimate of requested administrative fund carryover amounts and a description of proposed purpose for which those funds would be obligated or expended.</p>	

Timing of Unannounced Reviews

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>FNS issued CACFP 16-2011, <i>Child Nutrition Reauthorization 2010: Varied Timing of Unannounced Reviews in the Child and Adult Care Food Program</i>, on April 7, 2011, https://www.fns.usda.gov/cacfp/varied-timing-unannounced-reviews-child-and-adult, to advise State</p>	<p>This provision has been a standard operating practice for sponsoring organizations and State agencies since 2011.</p>	<p>September 22, 2023</p>

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<p>agencies of the new statutory requirement under HHFKA to ensure that the timing of unannounced reviews is varied in a way that would ensure they are unpredictable to the day care home or sponsored center.</p> <p>7 CFR 226.16(d)(4)(iii) currently outlines the frequency and type of required facility reviews in which a sponsoring organization must review a facility.</p> <p>7 CFR 226.6(m)(3) requires State agencies to assess each institution's compliance with requirements outlined under paragraph (m)(3).</p>	<p>Amends 226.16(d)(4)(iii) to require sponsoring organizations to vary the timing of unannounced reviews and vary the type of meal service subject to review.</p> <p>7 CFR 226.16(d)(4)(iii) <i>Frequency and type of required facility reviews</i>. Sponsoring organizations must review each facility three times each year, except as described in paragraph (d)(4)(iv) of this section. In addition:</p> <ul style="list-style-type: none"> (A) At least two of the three reviews must be unannounced; (B) At least one unannounced review must include observation of a meal service; (C) At least one review must be made during each new facility's first four weeks of Program operations; and (D) Not more than six months may elapse between reviews. (E) The timing of unannounced reviews must be varied so that they are unpredictable to the facility; and (F) All types of meal service must be subject to review and sponsoring organizations must vary the meal service reviewed. <p>A corresponding change is made at 7 CFR 226.6(m)(3)(ix) to require the State agency to assess the timing of each sponsoring organization's reviews of day care homes and sponsored centers.</p> <p>7 CFR 226.6(m)(3)(ix) If a sponsoring organization, training and monitoring of facilities, including the timing of reviews, as described in §226.16(d)(4)(iii).</p>	

Standard Agreements Between Sponsoring Organizations and Sponsored Child Care Centers

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>Current regulations at 7 CFR 226.6 require the sponsoring organization to enter into a written permanent agreement with each sponsored day care home, which specifies the rights and responsibilities of both parties. However, there is no standard form of agreement and no requirement that sponsoring organizations establish agreements with sponsored centers.</p>	<p>New definitions of “Facility” and “Sponsored center” are added under 7 CFR 226.2. This provision is a standard operating practice for sponsoring organizations.</p> <p>7 CFR 226.2 Definitions.</p> <p><i>Facility</i> means a sponsored center or a day care home.</p> <p><i>Sponsored center</i> means a child care center, an at-risk afterschool care center, an adult day care center, an emergency shelter, or an outside-school-hours care center that operates the Program under the auspices of a sponsoring organization. The two types of sponsored centers are as follows:</p> <ol style="list-style-type: none"> (1) An affiliated center is a part of the same legal entity as the CACFP sponsoring organization; or (2) An unaffiliated center is legally distinct from the sponsoring organization. <p>Amends 7 CFR 226.6(p) and 226.17a(f) and adds new paragraphs at 226.17(e) and (f), 226.19(d) and (e), and 226.19(d) and (e) to require sponsoring organizations to enter into permanent agreements with their unaffiliated centers.</p> <p>7 CFR 226.6(p) <i>Sponsoring organization agreement.</i></p> <ol style="list-style-type: none"> (1) Each State agency must develop and provide for the use of a standard form of written permanent agreement between each sponsoring organization and the day care homes or unaffiliated child care centers, outside-school- 	<p>September 22, 2023</p>

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	<p>hours-care centers, at-risk afterschool care centers, emergency shelters, or adult day care centers for which it has responsibility for Program operations. The agreement must specify the rights and responsibilities of both parties. The State agency may, at the request of the sponsoring organization, approve an agreement developed by the sponsoring organization. Nothing in this paragraph limits the ability of the sponsoring organization to suspend or terminate the permanent agreement, as described in §226.16(l).</p> <p>(2) At a minimum, the standard agreement must require day care homes and centers to:</p> <ul style="list-style-type: none"> (i) Allow visits by sponsoring organizations or State agencies to review meal service and records; (ii) Promptly inform the sponsoring organization about any change in its licensing or approval status; (iii) Meet any State agency approved time limit for submission of meal records; and (iv) Distribute to parents a copy of the sponsoring organization's notice to parents if directed to do so by the sponsoring organization. <p>(3) The agreement must include the right of day care homes and centers to receive timely reimbursement. The sponsoring organization must pay program funds to day care homes and centers within 5 working days of receipt from the State agency.</p> <p>(4) The State agency must include in this agreement its policy to restrict transfers of day care homes among</p>	

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	<p>sponsoring organizations. The policy must restrict the transfers to no more frequently than once per year, except under extenuating circumstances, such as termination of the sponsoring organization's agreement or other circumstances defined by the State agency.</p> <p>(5) The State agency may, at the request of the sponsoring organization, approve an agreement developed by the sponsoring organization.</p> <p>7 CFR 226.17(e) Unaffiliated sponsored child care centers must enter into a written permanent agreement with the sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must include the provisions set forth in paragraph (b) of this section.</p> <p>7 CFR 226.17(f) Independent child care centers must enter into a written permanent agreement with the State agency. The agreement must specify the rights and responsibilities of both parties as required by §226.6(b)(4). At a minimum, the agreement must include the provisions set forth in paragraph (b) of this section.</p> <p>7 CFR 226.19(d) Unaffiliated sponsored outside-school-hours-care centers must enter into a written permanent agreement with the sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must include the provisions set forth in paragraph (b) of this section.</p> <p>7 CFR 226.19(e) Independent outside-school-hours care centers must enter into a written permanent agreement with the State agency. The agreement must specify the</p>	

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	rights and responsibilities of both parties as required by §226.6(b)(4). At a minimum, the agreement must include the provisions described in paragraph (b) of this section.	

Collection and Transmission of Household Income Information

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>FNS issued CACFP 17-2011, <i>Child Nutrition Reauthorization 2010: Transmission of Household Income Information by Tier II Family Day Care Homes in the Child and Adult Care Food Program</i>, on April 7, 2011, https://www.fns.usda.gov/cacfp/transmission-household-income-information-tier-ii.</p> <p>This guidance describes how tier II family day care home providers may participate in the collection and transmission of household information. The guidance also outlines the options and privacy protections available to households. FNS included these options in the CACFP proposed rule for the public to review and comment on. FNS did not receive any substantive comments on this provision.</p> <p>Current regulations at 7 CFR 226.18(b)(13) states the agreement between the sponsoring organization and the day care home must include the State agency's policy to restrict transfers of day care homes between sponsoring organizations.</p>	<p>Adds a new paragraph at 7 CFR 226.18(b)(13) to add the right of the tier II day care home to assist in collecting and transmitting applications to the sponsoring organizations and prohibit the provider from reviewing applications from households.</p> <p>7 CFR 226.18(b)(13) The right of the tier II day care home to assist in collecting applications from households and transmitting the applications to the sponsoring organization. However, a tier II day care home may not review the collected applications. The sponsoring organizations may prohibit a tier II day care home from assisting in collection and transmittal of applications if the day care home does not comply with the process, as described in §226.23(e)(2)(viii).</p> <p>Also adds a new paragraph at 7 CFR 226.23(e)(1)(vii) to address household consent and actions to protect the privacy of a household's income information. This provision has been a standard operating practice for sponsoring organizations of day care homes since 2011.</p>	September 22, 2023

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<p>Current regulations at 7 CFR 226.23(e)(1) describe the collection of applications for free and reduced-price meals of participants enrolled in the day care home.</p>	<p>7 CFR 226.23(e)(1)(vii) If a tier II day care home elects to assist in collecting and transmitting the applications to the sponsoring organization, it is the responsibility of the sponsoring organization to establish procedures to ensure the provider does not review or alter the application. The household consent form must explain that:</p> <ul style="list-style-type: none"> (A) The household is not required to complete the income eligibility form in order for their children to participate in CACFP; (B) The household may return the application to either the sponsoring organization or the day care home provider; (C) By signing the letter and giving it to the day care home provider, the household has given the day care home provider written consent to collect and transmit the household's application to the sponsoring organization; and (D) The application will not be reviewed by the day care home provider. 	

Calculation of Administrative Funding for Sponsoring Organizations of Day Care Homes

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>FNS issued CACFP 06-2011, <i>Child Nutrition Reauthorization 2010: Administrative Payments to Family Day Care Home Sponsoring Organizations</i>, on December 22, 2010, https://www.fns.usda.gov/cacfp/2010-administrative-payments-family-day-care-home, to advise State agencies</p>	<p>Amends 7 CFR 226.12(a) to simplify the calculation of monthly administrative reimbursement that sponsoring organizations of day care homes are eligible to receive. To determine the amount of payment, the State agency must multiply the appropriate administrative reimbursement</p>	<p>September 22, 2023</p>

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<p>that a simpler method for determining monthly administrative payments had been established by HHFKA.</p> <p>Effective October 1, 2010, the sponsoring organization's monthly payment would be based on the statutory formula that would no longer require a comparison with actual expenditures or budgeted administrative costs.</p> <p>Current regulations at 7 CFR 226.12(a) outlines the administrative costs payments to a sponsoring organization of day care homes.</p>	<p>rate, which is announced annually in the Federal Register, by the number of day care homes submitting claims for reimbursement during the month. This provision has been a standard operating practice for State agencies since 2010.</p> <p>7 CFR 226.12(a) <i>General</i>. Sponsoring organizations of day care homes receive payments for administrative costs, subject to the following conditions:</p> <ol style="list-style-type: none"> (1) Sponsoring organizations will receive reimbursement for the administrative costs of the sponsoring organization in an amount that is not less than the product obtained each month by multiplying: <ol style="list-style-type: none"> (i) The number of day care homes of the sponsoring organization submitting a claim for reimbursement during the month, by (ii) The appropriate administrative rates announced annually in the Federal Register. (2) FNS determines administrative reimbursement by annually adjusting the following base administrative rates, as set forth in §226.4(i): <ol style="list-style-type: none"> (i) Initial 50 day care homes, 42 dollars; (ii) Next 150 day care homes, 32 dollars; (iii) Next 800 day care homes, 25 dollars; (iv) Additional day care homes, 22 dollars. (3) With State agency approval, a sponsoring organization may carry over a maximum of 10 percent of administrative funds received under paragraph (a)(1) of this section for use in the following fiscal year. If any 	

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	<p>carryover funds are not obligated or expended in the following fiscal year, they must be returned to the State agency, as described in §226.7(j).</p> <p>(4) State agencies must recover any administrative funds not properly payable, as described in FNS Instruction 796-2.</p>	

Carryover of Administrative Funding for Sponsoring Organizations of Day Care Homes

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>FNS issued a memorandum, CACFP 18-2011 <i>Child Nutrition Reauthorization 2010: Carry Over of Unused Child and Adult Care Food Program Administrative Payments</i>, on April 8, 2011, https://www.fns.usda.gov/cacfp/carry-over-unused. FNS advised State agencies of the option available to sponsoring organizations of day care homes to carry over up to 10 percent of unspent administrative reimbursement from the current Federal fiscal year to the next fiscal year.</p> <p>FNS issued additional guidance, CACFP 11-2012, <i>Family Day Care Home Administrative Reimbursements: Options and Carryover Reporting Requirements</i>, on March 19, 2012, https://www.fns.usda.gov/cacfp/family-day-care-home-administrative-reimbursements-options-and-carryover-reporting, and CACFP 24-2012: REVISED, <i>Family Day Care Home Administrative Reimbursements: Carryover Reporting Requirements for Fiscal Year 2012 and All Subsequent Years</i>, on September 5, 2012, https://www.fns.usda.gov/cacfp/family-day-care-home-</p>	<p>Amends 7 CFR 226.6(f)(1)(iv) and adds new paragraphs at 226.7(g)(2) and 226.12(a)(3) to allow carryover of administrative funds with State agency approval.</p> <p>7 CFR 226.6(f)(1)(iv) Require each sponsoring organization to submit an administrative budget with sufficiently detailed information concerning projected CACFP administrative earnings and expenses, as well as other non-Program funds to be used in Program administration, for the State agency to determine the allowability, necessity, and reasonableness of all proposed expenditures, and to assess the sponsoring organization's capability to manage Program funds. The administrative budget must demonstrate that the sponsoring organization will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796-2 (<i>Financial Management - Child and Adult Care Food Program</i>), 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR part 400 and part 415, and applicable Office of Management and</p>	September 22, 2023

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<p>administrative-reimbursements-carryover-reporting-requirements-fy-2012. These memoranda provided clarification of options regarding administrative reimbursements and the management of unspent funds that may be carried over from the current Federal fiscal year to the next fiscal year. They also described procedures for reporting administrative funds under a 2-year period of performance.</p>	<p>Budget circulars. The administrative budget submitted by a sponsoring organization of centers must demonstrate that the administrative costs to be charged to the Program do not exceed 15 percent of the meal reimbursements estimated or actually earned during the budget year, unless the State agency grants a waiver, as described in §226.7(g). For sponsoring organizations of day care homes seeking to carry over administrative funds, as described in §226.12(a)(3), the budget must include an estimate of requested administrative fund carryover amounts and a description of proposed purpose for which those funds would be obligated or expended.</p> <p>7 CFR 226.7(g)(2) For sponsoring organizations of day care homes seeking to carry over administrative funds as described §226.12(a)(3) of this part, the State agency must require the budget to include an estimate of the requested administrative fund carryover amount and a description of the purpose for which those funds would be obligated or expended by the end of the fiscal year following the fiscal year in which they were received. In approving a carryover request, State agencies must take into consideration whether the sponsoring organization has a financial management system that meets Program requirements and is capable of controlling the custody, documentation, and disbursement of carryover funds. As soon as possible after fiscal year close-out, the State agency must require sponsoring organizations carrying over administrative funds to submit an amended budget for State agency review and approval. The amended budget must identify the amount of administrative funds actually carried over and describe the</p>	

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	<p>purpose for which the carryover funds have been or will be used.</p> <p>7 CFR 226.12(a)(3) With State agency approval, a sponsoring organization may carry over a maximum of 10 percent of administrative funds received under paragraph (a)(1) of this section for use in the following fiscal year. If any carryover funds are not obligated or expended in the following fiscal year, they must be returned to the State agency, as described in §226.7(j).</p> <p>Also amends 7 CFR 226.7(j) and adds a new paragraph 226.12(a)(4) to require the State agency to establish procedures to recover administrative funds from sponsoring organizations of day care homes that are not properly payable, are in excess of the 10 percent maximum carryover amount, or any carryover amounts not expended or obligated by the end of the fiscal year following the fiscal year in which they were earned. This provision has been a standard operating practice for sponsoring organizations and State agencies since 2011.</p> <p>7 CFR 226.7(j) <i>Recovery of overpayments.</i> Each State agency must establish procedures to recover outstanding start-up, expansion, and advance payments from institutions which, in the opinion of the State agency, will not be able to earn these payments. In addition, each State agency must establish procedures to recover administrative funds from sponsoring organizations of day care homes that are not properly payable under FNS Instruction 796-2, administrative funds that are in excess of the 10 percent maximum carryover amount, and carryover amounts that</p>	

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	<p>are not expended or obligated by the end of the fiscal year following the fiscal year in which they were received.</p> <p>7 CFR 226.12(a)(4) State agencies must recover any administrative funds not properly payable, as described in FNS Instruction 796-2.</p>	

Provisions Affecting NSLP, SBP, CACFP, and SFSP

Fines For Violating Program Requirements

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>210.18(p) <i>School food authority appeal of State agency findings.</i> Except for FNS-conducted reviews authorized under §210.29(d)(2), each State agency shall establish an appeal procedure to be followed by a school food authority requesting a review of a denial of all or a part of the Claim for Reimbursement, withholding payment arising from administrative review activity conducted by the State agency under §210.18.</p>	<p>Adds new paragraphs to identify maximum thresholds for first, second, and subsequent fines at 7 CFR 210.26(b)(3), 215.15(b)(3), 220.18(b)(3), 225.18(k)(3), 226.25(j)(3), and 235.11(c)(2).</p> <p>Consistent with the statute and the proposed rule, the criteria that warrant fines include:</p> <ul style="list-style-type: none"> • Failure to correct severe program mismanagement; • Disregard of a program requirement of which an SFA or State agency has been informed; or • Failure to correct repeated violations of program requirements. <p>Fines will be applied under exceptional, not routine, circumstances. For example, fines may be warranted to address a serious violation, such as the intentional destruction of records or the intentional misappropriation of program funds.</p> <p>For State agency fines, FNS will calculate the maximum thresholds using all SAE allocations made available to the State agency in the most recent fiscal year for which full year data is available.</p> <p>For SFA fines, the State agency will calculate the maximum thresholds using program meal reimbursements from the</p>	<p>August 23, 2024</p>

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	<p>most recent fiscal year for which full year data (i.e., closeout data) is available.</p> <p>FNS and State agencies may calculate a fine below the maximum thresholds.</p> <p>Changes 'shall' to 'must' at 210.18(p) <i>School food authority appeal of State agency findings</i>. Except for FNS-conducted reviews authorized under §210.29(d)(2), each State agency must establish an appeal procedure to be followed by a school food authority requesting a review of a denial of all or a part of the Claim for Reimbursement, withholding payment arising from administrative or follow-up review activity conducted by the State agency under §210.18, or fines established under §§210.26, 215.15, or 220.18 of this chapter.</p> <p>7 CFR 210.26(b)(3) Funds used to pay fines established under this paragraph must be derived from non-Federal sources. The State agency must calculate the fine based the amount of the Program reimbursement earned by the school food authority or school for the most recent fiscal year for which full year data are available, provided that the fines does not exceed the equivalent of:</p> <ul style="list-style-type: none"> (i) For the first fine, 1 percent of the amount of meal reimbursement earned for the fiscal year; (ii) For the second fine, 5 percent of the amount of meal reimbursement earned for the fiscal year; and (iii) For the third or subsequent fine, 10 percent of the amount of meal reimbursement earned for the fiscal year. 	

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
	<p>7 CFR 215.15(b)(3) Funds used to pay a fine established under this paragraph must be derived from non-Federal sources. The State agency must calculate the fine based on the amount of Program reimbursement earned by the school food authority or school for the most recent fiscal year for which full year data are available, provided that the fine does not exceed the equivalent of:</p> <ul style="list-style-type: none"> (i) For the first fine, 1 percent of the amount of reimbursement for milk earned for the fiscal year; (ii) For the second fine, 5 percent of the amount of reimbursement for milk earned for the fiscal year; and (iii) For the third or subsequent fine, 10 percent of the amount of reimbursement for milk earned for the fiscal year. <p>7 CFR 220.18(b)(3) Funds used to pay a fine established under this paragraph must be derived from non-Federal sources. The State agency must calculate the fine based on the amount of Program reimbursement earned by the school food authority or school for the most recent fiscal year for which full year data are available, provided that the fine does not exceed the equivalent of:</p> <ul style="list-style-type: none"> (i) For the first fine, 1 percent of the amount of meal reimbursement earned for the fiscal year; (ii) For the second fine, 5 percent of the amount of meal reimbursement earned for the fiscal year; and (iii) For the third or subsequent fine, 10 percent of the amount of meal reimbursement earned for the fiscal year. 	

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
	<p>7 CFR 225.18(k)(3) Funds used to pay a fine established under this paragraph must be derived from non-Federal sources. In calculating an assessment, the State agency must calculate the fine based on the amount of Program reimbursement earned by the sponsor or its site for the most recent fiscal year for which full year data is available, provided that the fine does not exceed the equivalent of:</p> <ul style="list-style-type: none"> (i) For the first fine, 1 percent of the amount of meal reimbursement earned for the fiscal year; (ii) For the second fine, 5 percent of the amount of meal reimbursement earned for the fiscal year; and (iii) For the third or subsequent fine, 10 percent of the amount of meal reimbursement earned for the fiscal year. <p>7 CFR 226.25(j)(3) Funds used to pay a fine established under this paragraph must be derived from non-Federal sources. In calculating an assessment, the State agency must calculate the fine based on the amount of Program reimbursement earned by the institution or its facility for the most recent fiscal year for which full year data is available, provided that the fine does not exceed the equivalent of:</p> <ul style="list-style-type: none"> (i) For the first fine, 1 percent of the amount of meal reimbursement earned for the fiscal year; (ii) For the second fine, 5 percent of the amount of meal reimbursement earned for the fiscal year; and 	

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
	<p>(iii) For the third or subsequent fine, 10 percent of the amount of meal reimbursement earned for the fiscal year.</p> <p>7 CFR 235.11(c)(2) Funds used to pay a fine established under paragraph (c)(1) must be derived from non-Federal sources. The amount of the fine will not exceed the equivalent of:</p> <ul style="list-style-type: none"> (i) For the first fine, 1 percent of all allocations made available under §235.4 during the most recent fiscal year for which full year data are available; (ii) For the second fine, 5 percent of all allocations made available under §235.4 during the most recent fiscal year for which full year data are available; and (iii) For the third or subsequent fine, 10 percent of all allocations made available under §235.4 during the most recent fiscal year for which full year data are available. 	

Miscellaneous Amendments

State Administrative Expense Funds (SAE)

Current Regulations/Guidance	New Regulations/What's Changed	Compliance Date
<p>SAE regulations require State agencies to return to FNS any unexpended SAE funds at the end of the fiscal year following the fiscal year for which the funds are awarded.</p>	<p>Requires State agencies to return any unobligated SAE funds to FNS.</p> <p>7 CFR 235.5(d) Reallocation of funds. Annually, between March 1 and May 1 on a date specified by FNS, of each year, each State agency shall submit to FNS a State Administrative Expense Funds Reallocation Report (FNS-525) on the use of SAE funds. At such time, a State agency may release to FNS any funds that have been allocated, reallocated or transferred to it under this part or may request additional funds in excess of its current grant level. Based on this information or on other available information, FNS shall reallocate, as it determines appropriate, any funds allocated to State agencies in the current fiscal year which will not be obligated in the following fiscal year and any funds carried over from the prior fiscal year which remain unobligated at the end of the current fiscal year. Reallocated funds shall be made available for payment to a State agency upon approval by FNS of the State agency's amendment to the base year plan which covers the reallocated funds, if applicable. Notwithstanding any other provision of this part, a State agency may, at any time, release to FNS for reallocation any funds that have been allocated, reallocated or transferred to it under this part and are not needed to implement its approved plan under this section.</p>	<p>September 22, 2023</p>