

# Notices

Federal Register

Vol. 69, No. 29

Thursday, February 12, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Privacy Act: Proposed New System of Records

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of a proposed new privacy system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552(a), the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) is giving notice that it proposes to establish a new system of records: USDA/FNS-11, entitled Information on Persons Identified as Responsible for Serious Deficiencies, Proposed for Disqualification, or Disqualified to Participate as Principals or Family Day Care Home Operators in the Child and Adult Care Food Program (CACFP). This system consists of information on individuals (1) who have been identified by an administering State agency as having responsibility for serious deficiencies in the operation of the CACFP in institutions or sponsored centers which operate the program; (2) who have been proposed for disqualification from participation in the CACFP as a result of having been determined to be responsible for an uncorrected serious deficiency in the operation of the program in a institution or sponsored center; or (3) who have been disqualified from participation in the CACFP as principals of institutions, sponsored centers, or as operators of day care homes, as a result of being determined to be responsible for an uncorrected serious deficiency in the operation of an institution, a sponsored center, or a family day care home that participates in the program. Within the system of records, the records of persons who have been disqualified from participation in the program will be considered to be part of the National Disqualified List, which also includes the names of institutions that have been

disqualified from participation in the CACFP.

A *principal* means any individual who holds a management position within, or is an officer of, an institution or a sponsored center participating in the CACFP, including all members of the institution's board of directors or the sponsored center's board of directors. A *day care home* means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

This list will be made available to State agencies and sponsoring organizations that administer and operate the CACFP. For individuals who have been identified as having responsibility for a serious deficiency at an institution or who have been proposed for termination as responsible principals or individuals, the information will include the individual's name, the name of the State agency which identified the individual as responsible for the serious deficiency or proposed the individual to be disqualified, the reason for the serious deficiency or proposed disqualification, the name and address of the institution with which the individual was associated, and the individual's title at that institution. For individuals who have been disqualified as a result of being determined to be responsible for an uncorrected serious deficiency in the operation of an institution or a sponsored center, in addition to the information listed in the preceding sentence, the system will include the individual's mailing address and date of birth, the effective date of the disqualification, and whether the individual owes a debt to the CACFP. For individuals who have been disqualified as a result of being determined to be responsible for an uncorrected serious deficiency as the operator of a family day care home, the information will include name, mailing address, date of birth, reason for the disqualification, effective date of the disqualification, and whether the individual owes a debt to the program.

**DATES:** Comments must be received on or before March 15, 2004 to be assured of consideration. Comments will also be accepted via e-mail if sent no later than 11:59 p.m. on March 15, 2004. This notice will be effective April 12, 2004

unless modified by a subsequent notice to incorporate comments received by the public.

**ADDRESSES:** Comments should be addressed to: Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Room 638, 3101 Park Center Drive, Alexandria, Virginia 22302. Comments will also be accepted via e-mail sent to [CNDPROPOSAL@FNS.USDA.GOV](mailto:CNDPROPOSAL@FNS.USDA.GOV). All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.–5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Susan Fouts at (703) 305-2600.

**SUPPLEMENTARY INFORMATION:**

### Statutory Basis

Section 243(c) of Public Law 106-224, the Agricultural Risk Protection Act of 2000, amended § 17(d)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766 (d)(5)(E)(i) and (ii)) requires the USDA to maintain a list of institutions, family day care home providers, and individuals that have been terminated or otherwise disqualified from participation in the CACFP. The law also requires the USDA to make the list available to State agencies for their use in reviewing applications to participate and to sponsoring organizations to ensure that they do not employ as principals any persons who are disqualified from the program. This statutory mandate has been incorporated into § 226.6(c)(7) of the CACFP regulations.

### Background

In order to implement this and other provisions of Public Law 106-243, which was designed to improve the management and integrity of the CACFP, the USDA has published an interim rule entitled, "Child and Adult Care Food Program: Implementing Legislative Reforms to Strengthen Program Integrity" (67 FR 43447, June 27, 2002). As amended by the interim rule, § 226.6(b)(12) of the CACFP regulations prohibits State agencies from approving an institution's application to participate in the program if either the institution or any of its principals is on the National Disqualified List. This section of the regulations also prohibits State agencies from approving an application

submitted by a sponsoring organization on behalf of a facility if the facility or any of its principals is on the National Disqualified List. In addition, sponsoring organizations are prohibited (introductory paragraph of § 226.16(b) and § 226.6(c)(7)(iv)(B)) from submitting an application on behalf of a facility if either the facility or any of its principals is on the National Disqualified List and are prohibited from employing in a principal capacity any individual who is on the National Disqualified List (§§ 226.6(c)(3)(ii)(B), 226.6(c)(6)(ii)(G)(2), and 226.6(c)(7)(iv)(A)).

#### **Inclusion of "Responsible Principals" and "Responsible Individuals" of Institutions in the System of Records**

An institution that operates the CACFP is disqualified from participation in the program and placed on the National Disqualified List after having been declared seriously deficient; failing to take the required corrective action within the stated period of time; being notified of the State agency's intent to terminate their program agreement; and being offered an administrative review (appeal) of the State agency's proposed termination. When a State agency determines that an institution is seriously deficient, it must also identify the principals or individuals associated with the institution whose actions or conduct led to the institution's serious deficiency, and notify these persons that (1) they have been determined to be a "responsible principal" or a "responsible individual" for the serious deficiency, and (2) the failure to correct the serious deficiencies in the allotted time will result in the State agency's proposed termination of the institution's agreement and proposed disqualification of the institution and the responsible principals and individuals from participation in the program. The State agency must submit a copy of the notification of serious deficiency, including the names of the responsible principals and individuals, to the FNS regional office (FNSRO) that oversees the operation of the CACFP in that State.

If the serious deficiency is not corrected or if the State agency determines that the responsible principal(s) and individual(s) should be proposed for disqualification independently of the disqualification of the institution, it must notify the responsible principals and individuals that the State agency proposes to disqualify them and include them on the National Disqualified List and offer them an administrative review of the

State agency's proposed termination. The State agency must provide a copy of the notice of proposed disqualification to the FNSRO.

Section 226.6(k)(8) of the regulations requires that, in most instances, an individual's appeal will be considered as part of an institution's appeal of its proposed termination and disqualification. However, the administrative review officer may separate the appeals of the institution and the responsible principals and/or responsible individuals if (a) the institution does not appeal, but the individual wishes to do so or if (b) either the institution or the individual demonstrates to the administrative review officer's satisfaction that their interests conflict.

If the appeals of the institution and the responsible principal(s) and responsible individual(s) have not been separated by the administrative review officer, when the State agency terminates the institution's program and disqualifies it from participation in the CACFP, it will also disqualify those persons named as "responsible principals" or "responsible individuals," and will submit a copy of the termination notice (including the name(s), birth date(s), and address(es) of responsible principals and responsible individuals) to the FNSRO. If the institution is not terminated and disqualified but the responsible principals and individuals are disqualified, the State agency must notify the individuals of the disqualification and send a copy of the notice to the FNSRO. The FNSRO will transmit information on disqualified institutions and disqualified responsible principals and individuals to FNS Headquarters, which will then include the individual(s) on the National Disqualified List. State agencies are prohibited (§ 226.6(b)(12)) from approving the application of an institution that employs any person on the National Disqualified List in a principal capacity, or of a facility if the facility or any of its principals is on the National Disqualified List. Sponsoring organizations are prohibited (introductory paragraph of § 226.16(b) and § 226.6(c)(7)(iv)(B)) from submitting an application on behalf of a facility if either the facility or any of its principals is on the National Disqualified List and are prohibited from employing in a principal capacity any individual who is on the National Disqualified List (§§ 226.6(c)(3)(ii)(B), 226.6(c)(6)(ii)(G)(2), and 226.6(c)(7)(iv)(A)).

#### **Inclusion of Operators of Family Day Care Homes in the System of Records**

The operator of a family day care home will be placed on the National Disqualified List only after having been declared seriously deficient by the operator's sponsoring organization; failing to take the required corrective action within the stated period of time; being notified of the sponsoring organization's intent to terminate the operator's CACFP agreement; and being offered an administrative review of the sponsoring organization's proposed termination. If the operator of the family day care home fails to exercise his/her appeal rights, or if he/she loses the appeal, the sponsoring organization will terminate the operator's program agreement and will submit a copy of the termination notice (including the name, mailing address and date of birth of the family day care home operator, the effective date of the termination, the reasons for the termination, and whether the operator owes a debt to the program) to the State agency. The State agency will forward the information to FNS, which will include the family day care home operator on the National Disqualified List. The National Disqualified List is maintained at FNS Headquarters, and will be shared with other State administering agencies and sponsoring organizations.

#### **Period of Time on the National Disqualified List**

Once placed on the National Disqualified List, a responsible principal or individual or the operator of a family day care home will remain on the list for 7 years from the effective date of the disqualification or until acceptable corrective action is taken. Also, no responsible principal or individual or operator of a family day care home can be removed from the list until any debt owed to the program is repaid in full, even if the full 7 years has elapsed.

In order for a responsible principal or individual to be removed from the National Disqualified List, he/she must demonstrate to the satisfaction of both the State agency and FNS that appropriate corrective action has been taken. In order for a family day care home operator to be removed from the National Disqualified List, he/she must demonstrate to the satisfaction of the State agency that appropriate corrective action has been taken.

#### **Purpose of the National Disqualified List**

The purpose of maintaining a National Disqualified List and making it

available to State agencies and sponsoring organizations is to provide these entities with a tool for promoting CACFP integrity by preventing several situations from occurring. First, it prevents institutions whose CACFP agreements were terminated for cause in one State from simply moving to another State and reapplying for program participation. Second, it prevents individuals responsible for fraud or serious mismanagement from continuing to be involved in CACFP administration by forming a new corporate entity and entering the program under a different organizational name. Third, it prevents individuals associated with a disqualified institution from re-entering the CACFP as a family day care home provider, as a principal with another institution, or as a principal in a sponsored center. Finally, it prevents family day care home providers terminated for cause by one sponsoring organization from re-entering the CACFP under the auspices of a different sponsoring organization.

#### Reason for This Notice

Because this system of records contains personal information about individuals (*i.e.*, names, birth dates, and addresses) as well as the nature of the serious deficiency for which they were responsible, the Privacy Act of 1974, as amended, requires publication of a notice in the **Federal Register** announcing the existence and character of the system of records and the routine uses to which it is put. Therefore, FNS is proposing the following routine use for this system of records in order to fully comply with this legislative mandate. This system of records is routinely updated and the data on individuals who have been disqualified from participation in the CACFP is made available to all State agencies and sponsoring organizations administering the program.

A "Report on a New System," required by 5 U.S.C. 552a(r), as implemented by OMB Circular A-130, was sent to the Chair, Senate Committee on Governmental Affairs, the Chairman, House Committee on Government Reform, and to the Administrator, Office of Information and Regulatory Affairs, of the Office of Management and Budget on or before February 12, 2004.

Dated: February 5, 2004.

**Ann M. Veneman,**  
Secretary.

#### USDA/FNS-11

##### SYSTEM NAME:

USDA/FNS-11, Information on Persons Identified as Responsible for

Serious Deficiencies, Proposed for Disqualification, or Disqualified to Participate as Principals or Family Day Care Home Operators in the Child and Adult Care Food Program (CACFP).

##### SECURITY CLASSIFICATION:

None.

##### SYSTEM LOCATION:

This system of records is under the control of the Deputy Administrator, Special Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302. The data on individuals who have been identified or proposed for disqualification because of responsibility for a serious deficiency in an institution or sponsored center which operates the CACFP will be maintained at the FNS Regional Office which oversees the State agency which has made the determination of serious deficiency or proposed the disqualification. The data on individuals who have been disqualified from participation in the CACFP will be maintained in the Child Nutrition Division of the Food and Nutrition Service.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of information on individuals that have been determined to be responsible for serious deficiencies, proposed for disqualification, or disqualified from participation in the CACFP. The list will include both individuals disqualified based on responsibility for serious deficiencies in the operation of CACFP independent centers and sponsoring organizations based on regulations in place before July 29, 2002, as well as all individuals that are disqualified from CACFP participation after July 29, 2002.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

For individuals who have been determined to be responsible for a serious deficiency at an institution or who have been proposed for disqualification as responsible principals or individuals of a seriously deficient institution: individual's name, name and address of the institution, title or position held with institution, reason for determination of serious deficiency or proposed disqualification, name of the State agency making the determination of serious deficiency or proposing disqualification.

For individuals who have been disqualified as responsible principals or individuals: all of the information in the previous paragraph, plus the individual's mailing address, the

individual's date of birth, the effective date of the disqualification and whether the individual owes a debt to the CACFP.

For family day care home providers: individual's name, address, date of birth, reason for disqualification, name of the sponsoring organization, state agency imposing disqualification, termination date, and whether any debt is owed to the CACFP.

Since State agencies were not required to collect the mailing addresses or birth date of disqualified responsible principals and individuals and operators of family day care homes prior to July 29, 2002, this information may not be available for individuals disqualified from the CACFP before this date.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 1766 (d)(5)(E)(i) and (ii), the Richard B. Russell National School Lunch Act.

##### PURPOSE:

To promote integrity in the CACFP by providing State administering agencies and sponsoring organizations with the names of institutions, family day care home operators and individuals that have been terminated or otherwise disqualified from participating in the CACFP. Once disqualified, these institutions, individuals, and day care home operators will be prohibited from participating in the program for 7 years from the effective date of the disqualification. Institutions and individuals associated with institutions may be removed from the list earlier if the State agency and FNS concur that the serious deficiency that caused their placement on the list has been corrected; operators of family day care homes may be removed earlier if the State agency concurs that the serious deficiency that caused their placement on the list has been corrected. However, no institution, individual, or family day care home operator may be removed from the list if they owe a debt to the CACFP.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) USDA/FNS will disclose information from this system of records on individuals who have been disqualified from participation in the CACFP to every agency, whether State or FNS, that administers the CACFP directly in the States or at the Federal level, and to every sponsoring organization participating in the program. The information will be available to the State agency Directors

and staff members who make decisions about application approval or termination from participation in the program or, in the case of sponsoring organizations, make hiring decisions or submit applications for approval of family day care home operators to the State agency.

(2) USDA/FNS may disclose information from this system of records to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(3) USDA/FNS may disclose information from this system of records to a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(4) USDA/FNS may disclose information from this system of records when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or Tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

(5) USDA/FNS may disclose information from this system of records to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

(6) USDA/FNS may disclose information from this system of records to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on computer disks, in computer files on the FNS network, and in file folders at FNS Regional offices and at FNS Headquarters; information on individuals who have been disqualified from participation in the CACFP will also be available in a password-protected environment on the Internet.

**RETRIEVABILITY:**

Records are retrieved by the individual's name.

**SAFEGUARDS:**

Access to records is limited to those persons who process the records for the specific routine uses stated above. Computer disks are kept in physically secured rooms or cabinets. Files on the network are only available to persons with authorized access to the network. Paper records are segregated and physically stored in locked cabinets. Internet access will be restricted to those State agency or sponsoring organization staff with a need to know the list's contents and with password access to the list.

**RETENTION AND DISPOSAL:**

Once placed on the National Disqualified List, a responsible principal or individual or the operator of a family day care home will remain on the list for 7 years from the effective date of the disqualification or until acceptable corrective action is taken. Also, no responsible principal or individual or operator of a family day care home can be removed from the list until any debt owed to the CACFP is repaid in full, even if the full 7 years has elapsed.

**SYSTEM MANAGER AND ADDRESS:**

Director, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101

Park Center Drive, Room 638, Alexandria, Virginia 22302.

**NOTIFICATION PROCEDURE:**

Individuals may request from the system manager identified above information regarding this system of records or whether the system contains records pertaining to them. Any individual requesting such information must provide his or her name, birth date, and address.

**RECORD ACCESS PROCEDURES:**

Individuals may obtain information about records in the system pertaining to them by submitting a written request to the system manager listed above. The envelope and letter should be marked "Privacy Act Request" and must include the name and address of the individual for whom the request is made.

**CONTESTING RECORD PROCEDURES:**

Before being included in this system of records, operators of day care homes, responsible principals, and responsible individuals have been afforded the right to an administrative review of the findings that led to the action to disqualify them from CACFP participation. Therefore, the procedures set forth in this provision are not intended as an additional method of appeal.

Individuals desiring to contest or amend information maintained in the system should direct their requests to the System Manager listed above. The request should state the reason(s) for contesting the information and provide any available documentation to support the requested action.

**RECORD SOURCE CATEGORIES:**

Information in this system is provided to FNS by State agencies that administer the CACFP in the States.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.  
[FR Doc. 04-3116 Filed 2-11-04; 8:45 am]  
**BILLING CODE 3410-30-P**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-