

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 226

RIN 0584-AE12

#### Child and Adult Care Food Program: Amendments Related to the Healthy, Hunger-Free Kids Act of 2010

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to codify several provisions of the Healthy, Hunger-Free Kids Act of 2010 affecting the management of the Child and Adult Care Food Program (CACFP). The Department is proposing to require institutions to submit an initial CACFP application to the State agency and, in subsequent years, periodically update the information in lieu of submitting a new application; require sponsoring organizations to vary the timing of reviews of sponsored facilities; require State agencies to develop and provide for the use of a standard permanent agreement between sponsoring organizations and day care centers; allow tier II day care homes to collect household income information and transmit it to the sponsoring organization; modify the method of determining administrative payments to sponsoring organizations of day care homes by basing payments on a formula; and allow sponsoring organizations of day care homes to carry over up to 10 percent of their administrative funding from the previous fiscal year into the next fiscal year. This rule also proposes to incorporate several changes to the application and renewal process which are expected to improve the management of CACFP and to make a number of miscellaneous technical changes.

**DATES:** To be assured of consideration, comments must be received on or before June 8, 2012.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit comments on this proposed rule. Comments may be submitted through one of the following methods:

- *Preferred method:* Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Comments should be addressed to Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302-1594.

- *Hand Delivery or Courier:* Deliver comments to the Food and Nutrition Service, Child Nutrition Division, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302-1594, during normal business hours of 8:30 a.m.–5 p.m.

Comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. The Department will make the comments publicly available on the Internet via <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Julie Brewer at the above address or telephone (703) 305-2590.

#### SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Executive Summary
- III. Background and Discussion of the Proposed Rule
- IV. Procedural Matters

#### I. Public Comment Procedures

Your written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason(s) for any change you recommend or proposal(s) you oppose. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. Comments received after the close of the comment period (refer to **DATES**) will not be considered or included in the Administrative Record for the final rule.

Executive Order 12866 requires each agency to write regulations that are

simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the proposed regulations clearly stated?
- (2) Does the rule contain technical language or jargon that interferes with its clarity?

- (3) Does the format of the rule (e.g., grouping and order of sections, use of headings, and paragraphing) make it clearer or less clear?

- (4) Would the rule be easier to understand if it was divided into more (but shorter) sections?

- (5) Is the description of the rule in the preamble section entitled "Background and Discussion of the Proposed Rule" helpful in understanding the rule? How could this description be more helpful in making the rule easier to understand?

## II. Executive Summary

### *Purpose of the Regulatory Action*

The Department is proposing to amend the regulations for CACFP at 7 CFR part 226 to codify several of the provisions of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). This proposed rule would affect the management and administration of CACFP for State agencies, new and renewing institutions, sponsoring organizations, and sponsored facilities. This rule also proposes to incorporate several changes to the application and renewal process which are expected to improve the management of CACFP and to make a number of miscellaneous technical changes to the organization of 7 CFR part 226.

### **Summary of the Major Provisions of the Regulatory Action**

#### *CACFP Initial Application Submission and Renewal Requirements*

Current regulations require institutions to submit an initial application for CACFP participation and then to reapply to the CACFP on a schedule determined by the State agency, but not less than every one to three years. Section 331(b) of the Act amended section 17(d) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1766(d)) to require, in lieu of submitting a renewal application, that renewing institutions need only annually confirm that the institution is in compliance with the licensing

requirements of subsection 17(a)(5) of the NSLA (42 U.S.C. 1766(a)(5)) and submit to the State agency any additional necessary information, as specified by the Department.

This proposal would eliminate a renewal application for renewing institutions; however, such institutions would be required to annually certify that they still meet the program requirements for continued participation and to provide an update of the information provided on the initial application if the State agency has not already been notified of the changes. The exception to this is the budget submission for sponsoring organizations, which as in current regulations, must be submitted annually rather than through the certification process.

#### *Varied Timing of Reviews Conducted by Sponsoring Organizations*

Section 331(b) of the Act amended section 17(d)(2) of the NSLA (42 U.S.C. 1766(d)(2)) to require that sponsoring organizations vary the timing of unannounced reviews so they are unpredictable to sponsored facilities. We anticipate unannounced reviews will be more effective in detecting CACFP integrity issues. This proposed rule would require sponsoring organizations to ensure that the timing of unannounced reviews is varied in a way that would ensure they are unpredictable to the facility under review.

#### *Permanent Agreements Between Sponsoring Organizations and Sponsored Centers*

Section 331(c) of the Act amended section 17(j)(1) of the NSLA (42 U.S.C. 1766(j)(1)) to require State agencies to develop and provide for the use of a standard permanent operating agreement between sponsoring organizations of centers and their sponsored centers. This rule proposes to require State agencies to develop standard permanent agreements that sponsors of child care centers, adult day care centers, emergency shelters, at-risk afterschool care centers, or outside school hours care centers will enter into with their unaffiliated sponsored centers.

#### *Transmission of Income Information by Sponsored Day Care Homes*

Current regulations require a sponsoring organization, upon the request of a tier II day care home provider, to collect income eligibility applications from households (7 CFR 226.18(b)(12)). Section 333 of the Act amended section 17(f)(3)(A)(iii)(III) of

the NSLA (42 U.S.C. 1766(f)(3)(A)(iii)(III)) to require sponsoring organizations to allow providers of tier II day care homes to assist in the transmission of household income information with the written consent of the parents or guardians of children in their care. This rule proposes to allow the tier II day care home to assist in collecting income eligibility applications from households and transmitting the applications to the sponsoring organization. The addition would limit the provider's assistance to collecting applications and transmitting them to the sponsoring organization, and prohibits tier II day care home providers from reviewing the applications.

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

Current regulations found at 7 CFR 226.12(a) require that administrative cost payments to a sponsoring organization of day care homes may not exceed the lesser of: (1) Actual expenditures for the costs of administering the CACFP less income to the CACFP, or (2) the amount of administrative costs approved by the State agency in the sponsoring organization's budget, or (3) the sum of the products obtained by multiplying each month the sponsoring organization's number of participating homes by the current administrative payment rate for day care home sponsors. In addition, current regulations specify that administrative payments to a sponsoring organization may not exceed 30 percent of the total amount of administrative payments and food service payments for day care home operations.

Section 334 of the HHFKA amended section 17(f)(3) of the NSLA (42 U.S.C. 1766(f)(3)) to eliminate the "lesser of" cost and budget comparisons for calculating administrative payments to day care home sponsoring organizations. Instead, effective October 1, 2010, administrative reimbursements are determined only by multiplying the number of day care homes under the oversight of each sponsoring organization by the appropriate annually adjusted administrative reimbursement rate(s). This rule proposes to modify the method of determining administrative payments to sponsoring organizations of day care homes by basing payments on the formula specified in Section 17 of the NSLA.

#### *Carryover of Family or Group Day Care Home Sponsoring Organization Administrative Payments*

Section 334 of the HHFKA amended section 17(f)(3) of the NSLA (42 U.S.C. 1766(f)(3)) to permit day care home sponsors to carry over and obligate a maximum of 10 percent of administrative payments into the succeeding fiscal year. Under this proposal, the Department would require the State agency to ensure that sponsoring organizations of day care homes seeking to carryover administrative funds include, in their annual budget submission for State agency review and approval, estimates of the amount of administrative funds that will be carried over and a description of the proposed purpose(s) for which those funds will be used.

#### *Miscellaneous Changes*

This proposal would make a number of changes that complement the requirements of the NSLA as amended by the HHFKA. Chief amongst these changes is a proposed re-organization of § 226.6, *State agency administrative responsibilities*. The re-organization is expected to improve the clarity of the regulations and to provide more uniformity to application and renewal requirements. The proposal moves the existing initial application requirements and the proposed renewal requirements to new §§ 226.6a and 226.6b, respectively.

#### *Costs and Benefits*

While CACFP institutions and State agencies administering CACFP will be affected by this rulemaking, the economic effect will not be significant.

### **III. Background and Discussion of the Proposed Rule**

The Department is proposing to amend the regulations for CACFP at 7 CFR part 226. These changes are intended to implement several of the provisions of the HHFKA affecting the management and administration of CACFP for State agencies, new and renewing institutions, sponsoring organizations, and sponsored facilities.

The Department is proposing to require institutions to submit an initial CACFP application to the State agency and, in subsequent years, periodically update the information in lieu of submitting a new application; require sponsoring organizations to vary the timing of reviews of sponsored facilities; require State agencies to develop and provide for the use of a standard permanent agreement between sponsoring organizations and day care centers; allow tier II day care homes to

collect household income information and transmit it to the sponsoring organization; modify the method of determining administrative payments to sponsoring organizations of day care homes by basing payments on a formula; and, allow sponsoring organizations of day care homes to carry over up to 10 percent of their administrative funding from the previous fiscal year into the next fiscal year. This rule also proposes to incorporate several changes to the application and renewal process which are expected to improve the management of CACFP and to make a number of miscellaneous technical changes. The proposed amendments are discussed in more detail below.

#### *CACFP Initial Application Submission and Renewal Requirements*

Current regulations require institutions to submit an initial application for CACFP participation then reapply to the Program on a schedule determined by the State agency, but not less than every one to three years. As a result, the State agency must periodically re-determine if an institution is eligible to participate in the CACFP based on a renewal application process. Most of the requirements for the initial application process are currently found at §§ 226.6(b)(1) and 226.6(f) and most of the requirements for the renewal application process are found at §§ 226.6(b)(2) and 226.6(f).

Section 331(b) of the HHFKA amends section 17(d) of the NSLA (42 U.S.C. 1766(d)) to require, in lieu of submitting a renewal application, that renewing institutions need only annually confirm that the institution is in compliance with the licensing requirements of subsection 17(a)(5) of the NSLA (42 U.S.C. 1766(a)(5)) and submit to the State agency any additional necessary information, as specified by the Department. State agencies were advised of these requirements in a memorandum issued April 8, 2011, *Child Nutrition Reauthorization 2010: Child and Adult Care Food Program Applications (CACFP 19–2011)*.

This provision enables the Department to determine the new renewal process and the information that annually must be submitted to the State agency. Reflecting the intent of the HHFKA, this provision to eliminate the renewal application, this proposal would require participating institutions to annually certify that they still meet the CACFP requirements for continued participation and to provide an update of the information provided on the initial application, if the State agency

has not already been notified of the changes. Thus, even though management plans would be annually certified, the plans must be updated as necessary to ensure they provide a current reflection of CACFP operations. The exception to this is the budget submission for sponsoring organizations, which must still be submitted annually rather than through the certification process. These changes are expected to reduce current application process burden, because renewing institutions will no longer need to submit documentation demonstrating they meet CACFP requirements, but simply provide certification that they are still in compliance instead.

This proposed rule outlines the complete list of information that institutions would need to certify as unchanged or indicate that it has already updated with the State agency. All institutions would be required to annually certify that they are not on the National disqualified list; they are not ineligible for other publicly funded programs; the institution's principals have not been convicted of a crime in the past seven years indicating a lack of business integrity; they are still compliant with performance standards; and, they are licensed or approved or, if a sponsoring organization, that all of their facilities are licensed or otherwise approved. Sponsoring organizations would continue to submit an annual budget and would also certify that: their management plan is up-to-date; their outside employment policy is current; and their training has been provided for all facilities. In addition this rule proposes to require renewing institutions to certify that they have no unreported less-than-arms-length transactions or other potential conflicts of interest have occurred in the past year and that any anticipated less-than-arms-length transactions or other potential conflicts of interest in the upcoming year have been disclosed to the State agency—both of which would be new requirements. If the institution cannot certify that all of this required information is unchanged or has already been updated, the institution would be required to submit any information necessary to notify the State agency of the change at that time.

As noted above, two changes to the application and renewal process are being added to this proposed rule in order to improve CACFP management. In accordance with the Food and Nutrition Service (FNS) Instruction 796–2 *Financial Management—Child and Adult Care Food Program*, sponsoring organizations must disclose

less-than-arms-length transactions and potential conflicts of interest. Nevertheless, the Department has found that this existing requirement has not adequately addressed the continued problems associated with these types of transactions. The Department's monitoring activities continue to find a number of sponsoring organizations that have not properly disclosed less-than-arms-length transactions and potential conflicts of interest, and that have not received the required prior approval from their State agencies. As a result, in many cases, CACFP funds have been used improperly, resulting in large overclaims against sponsoring organizations.

To better address this issue, this rule proposes to specifically require the disclosure of anticipated less-than-arms-length transactions and potential conflicts of interest in both the initial application submitted by a new sponsoring organization and, for renewing sponsors, in the annual information submission process.

Accordingly, §§ 226.2, new 226.6a and 226.6b would incorporate this addition.

The second addition would require that institutions provide State agencies with the full legal names and any other names previously used, for all principals in the initial application and whenever the institution adds new principals. This change would also require a sponsoring organization to provide the full legal names, and any other names previously used, for all day care home providers and by the principals of its sponsored centers. The proposal adds this change to the regulations in every instance where institutions were previously required to report the full names of their principals, and the principals of their sponsored facilities, to the State agency. Thus, the proposed language would require “full legal names and any other names previously used” where it currently requires “full names.” This will ensure better identification of any individuals who may be later placed on the National disqualified list. Accordingly, §§ 226.2, 226.6a and 226.6b would incorporate this addition.

Another provision necessitated by these changes to the application process is the addition of a serious deficiency dealing with institutions that fail to submit acceptable or complete renewal information. The amendments made to NSLA by the HHFKA significantly modifying the current renewal application process means that renewing institutions would continue to be considered “participating institutions.” Under § 226.6(c)(2) of this proposal, an institution's failure to

properly submit renewal information would be considered a serious deficiency and the State agency would be required to follow the normal serious deficiency process for participating institutions. The corrective action in this case would be for the institution to submit the proper or corrected renewal information to the State agency in accordance with established procedures. As is true under the current renewal application process, State agencies would continue to have discretion in declaring renewing institutions seriously deficient, based on the type and magnitude of the missing information and the institution's willingness to quickly submit any missing information.

While reviewing the current regulations relating to application requirements, it became evident that the application and reapplication requirements for institutions are found in various places throughout 7 CFR part 226. To clearly articulate the new renewal process and distinguish it from the initial application process, the Department undertook a re-organization of the application and renewal requirements throughout 7 CFR part 226. Because the Department has received complaints about the length of § 226.6, the section in which the current application and reapplication requirements are found, the proposal moves the existing initial application requirements and the proposed renewal requirements to new §§ 226.6a and 226.6b, respectively. New § 226.6a is proposed to be titled "*State agency application requirements for new institutions*" and § 226.6b is proposed to be titled "*State agency annual information submission requirements for renewing institutions*." This means that though §§ 226.6a and 226.6b do not look identical to current §§ 226.6(b)(1) and (b)(2), respectively, no requirements have been changed except for those outlined in this preamble.

With this new re-organization, the proposal would move the application or renewal requirements from the other sections in which they are currently located (namely §§ 226.6(b), 226.6(f), 226.16(b) and 226.17a(e)) to the relevant new sections. All application requirements contained in these sections would be deleted and, where necessary, would instead contain only cross references to §§ 226.6a and 226.6b. To assist the reader, distribution and derivation tables are posted on [www.regs.gov](http://www.regs.gov) and accompany this proposed rule. The distribution table identifies each existing section and where it would appear in the proposed amendatory language. The derivation

table identifies each proposed new section and where it appears in the existing regulations.

Two additional proposed changes are included to provide a more uniform application process for day care homes and other facilities. Proposed §§ 226.6a(c)(5) and § 226.6b(d)(3) would require the State agency to collect from each sponsoring organization a list of all applicant day care homes, child care centers, outside-school-hours-care centers, at-risk afterschool care centers, and adult day care centers. Previously, this requirement appeared only in § 226.17a, although it is standard operating practice. Proposed § 226.6a(c)(9) would include requirements for facility applications for new institutions, these requirements are not new requirements but are proposed to be codified so that all application requirements are available in one place. Currently, facility application requirements are found at § 226.16(b). Additionally, CACFP 01–2008, *Facility Applications and Agreements in the Child and Adult Care Food Program (CACFP)*, published November 15, 2007 discusses CACFP application requirements. These two proposed changes seek to provide a more uniform application process.

Finally, this rule proposes a change outside of the CACFP application process. In the proposed re-organization of § 226.6, paragraph (f)(4) restates existing regulations found at § 226.6(f)(1)(viii) that require State agencies to obtain from the State agency that administers the NSLP, a list of "elementary" schools in the State in which at least one-half of the children enrolled are certified to receive free or reduced-price meals. The State agency must provide the list of "elementary" schools to sponsoring organizations of day care homes. However, section 121 of the HHFKA amended section 17(f)(3)(A)(ii)(I)(bb) of the NSLA, to remove the word "elementary" from the definition of tier I day care homes. Since the proposed re-organization at § 226.6(f)(4) includes this provision, the Department is proposing to remove the term "elementary" from the regulatory text. The Department intends to issue a final rule that will make this change permanent in the near future.

We encourage commenters to limit their comments to the new changes proposed in this rule and to the proposed re-organization of §§ 226.6, 226.6a, and 226.6b. We are interested in whether the re-organization improves the clarity of the regulations.

#### *Varied Timing of Reviews Conducted by Sponsoring Organizations*

Current regulations require sponsoring organizations to conduct three reviews per year per sponsored facility, two of which must be unannounced. One of the unannounced reviews must include observation of a meal service. No more than six months may elapse between reviews (7 CFR 226.16(d)(4)(iii)).

Unannounced reviews are an effective tool in ensuring CACFP integrity. An unannounced review gives sponsoring organizations the opportunity to document how the facility operates on any given day and to offer technical assistance. In addition, unannounced reviews offer a first-hand opportunity to detect and identify areas of mismanagement (such as inaccurate meal counts, problems with recordkeeping, and menu and enrollment discrepancies) and allow sponsoring organizations to initiate immediate corrective action, up to and including declaring a facility seriously deficient.

However, unannounced reviews that follow a consistent pattern are predictable and, therefore, undermine the intent of the CACFP's unannounced review requirements. Examples of consistent patterns are unannounced reviews that always occur during the third week of January, the third week of May, and the third week of September; reviews that never occur during the first week of the month when claims are being processed; meal service observations that always occur during the lunch meal service or never occur on weekends or evenings. Such patterns hinder the sponsoring organization's ability to uncover management deficiencies and CACFP abuse by enabling facilities to predict when the sponsor review will occur.

Section 331(b) of the HHFKA amended section 17(d)(2) of the NSLA (42 U.S.C. 1766(d)(2)) to require that sponsoring organizations vary the timing of unannounced reviews so they are unpredictable to sponsored facilities. The expectation is that unannounced reviews would be more effective in detecting CACFP integrity issues. State agencies were advised of this requirement in a memorandum issued April 7, 2011, *Child Nutrition Reauthorization 2010: Varied Timing of Unannounced Reviews in the Child and Adult Care Food Program* (CACFP 16–2011).

The Department appreciates that it may be difficult for a sponsoring organization to create separate review schedules for each facility. However, as

required by the HHFKA amendments, sponsoring organizations can and should vary the scheduling of reviews within each month and each year and frequently change the intervals between reviews (e.g., 90, 105, 120, 135 days between reviews of facilities). Similarly, sponsoring organizations should alternate reviews of the breakfast, lunch, and supper meal service in facilities being reviewed.

To effect these changes, the proposal would revise § 226.16, *Sponsoring organization provisions*, by expanding the requirements relating to the frequency and type of required facility reviews in paragraph (d)(4)(iii) of that section. The additions would require sponsoring organizations to ensure that the timing of unannounced reviews is varied in a way that would ensure they are unpredictable to the facility. The proposed language also makes it clear that always reviewing the same meal service would be considered predictable and would be inconsistent with the CACFP requirements.

In addition, § 226.6, *State agency administrative responsibilities*, would be amended at paragraph (m)(3) of that section to expand the scope of the State agency review of sponsoring organizations' monitoring of facilities. Under the proposal, State agencies would be required to assess whether the timing of the sponsoring organization's facility reviews are varied and unpredictable, as required by § 226.16(d)(4)(iii). This addition ensures that State agencies, as part of their reviews of sponsoring organizations, would evaluate the timing and pattern of the facility reviews conducted by the sponsor to ensure that they are not predictable, and are in compliance with this requirement. As is currently the case, a sponsor's failure to comply with all of the requirements of § 226.16(d) could lead to a determination of a serious deficiency.

#### *Permanent Agreements Between Sponsoring Organizations and Sponsored Centers*

Current regulations require State agencies to develop and provide for the use of permanent agreements between sponsoring organizations and day care homes, but do not require such agreements for sponsoring organizations of centers and their sponsored centers.

Section 331(c) of the HHFKA amended section 17(j)(1) of the NSLA (42 U.S.C. 1766(j)(1)) to require State agencies to develop and provide for the use of permanent operating agreements between sponsoring organizations of centers and their sponsored centers and day care homes. To effect these changes,

§ 226.2, *Definitions*, would be amended by adding a definition of sponsored center. The definition would distinguish between affiliated and unaffiliated centers. Differentiating between affiliated and unaffiliated centers is necessary because only unaffiliated centers would be required to have an agreement with their sponsoring organization.

Unlike affiliated sponsored day care centers, unaffiliated sponsored day care centers are legally distinct from their sponsoring organization. For this reason, an agreement between the sponsoring organization and unaffiliated sponsored centers is essential to a clear understanding of responsibilities for participation in the CACFP. Because affiliated centers are not legally distinct from their sponsoring organization, the Department deems a requirement for an agreement unnecessary for affiliated centers. However, sponsoring organizations may, at their discretion, require an agreement with their affiliated centers.

Section 226.6, *State agency administrative responsibilities*, is proposed to be amended to include the requirement for State agencies to develop and provide for the use of a standard agreement between sponsoring organizations and unaffiliated child care centers. It also allows State agencies to approve an agreement developed by the sponsoring organization.

Section 226.16, *Sponsoring organization provisions*, is proposed to be amended to include the requirement for sponsors of child care centers, adult day care centers, emergency shelters, at-risk afterschool care centers, or outside school hours care centers to enter into a permanent agreement with their unaffiliated sponsored centers. At a minimum, the agreement would embody the requirements and the rights and responsibilities of both parties as currently set forth in § 226.17, *Child care center provisions*, § 226.17a, *At-risk afterschool care center provisions*, § 226.19, *Outside-school-hours care center provisions* and § 226.19a, *Adult day care center provisions*, as applicable. Corresponding changes were also made to update and align the requirements and responsibilities set forth in §§ 226.17, 226.17a, 226.19, and 226.19a. These include: (a) Requiring centers to permit visits by sponsoring organizations or State agencies to the center to review meal service and records and inform sponsoring organizations about changes in licensing status; (b) requiring sponsored child care centers to promptly inform the sponsoring organization about any change in its licensing or approval

status; (c) establishing the right of centers to receive in a timely manner reimbursement from the sponsoring organizations for meals served; (d) requiring child care centers to meet any State agency approved time limit for submission of meal records; and (e) requiring sponsored child care centers to distribute to parents a copy of the sponsoring organization's notice to parents if directed to do so by the sponsoring organization.

#### *Transmission of Income Information by Sponsored Day Care Homes*

Current regulations require sponsoring organizations, upon the request of a tier II day care home provider, to collect income eligibility applications from households (7 CFR § 226.18(b)(12)). To eliminate any concerns households may have about sharing their income information with their provider, the current regulations prohibit providers from collecting the applications directly from households.

Section 333 of the HHFKA amended section 17(f)(3)(A)(iii)(III) of the NSLA (42 U.S.C. 1766(f)(3)(A)(iii)(III)) to require sponsoring organizations to allow providers of tier II day care homes to assist in the transmission of household income information with the written consent of the parents or guardians of children in their care. State agencies were advised of this requirement in a memorandum issued April 7, 2011, *Child Nutrition Reauthorization 2010: Transmission of Household Income Information by Tier II Family Day Care Homes in the Child and Adult Care Food Program (CACFP 17–2011)*.

To effect these changes, the Department proposes to amend § 226.18, *Day care home provisions*, by revising paragraph (b)(12) of that section to allow the tier II day care home to assist in collecting completed income eligibility applications from households and transmitting the applications to the sponsoring organization. As proposed, the addition would limit the provider's assistance to collecting applications and transmitting them to the sponsoring organization, and would prohibit tier II day care home providers from reviewing the completed applications.

In addition, § 226.23, *Free and reduced-price meals*, paragraph (e)(2) is proposed to be amended to specify the steps a tier II day care home must take when assisting in the collection and transmission of applications. Sponsoring organizations would be required to explain in the letter to the household, that the household can return the application to either the sponsoring organization or the day care

home provider. Under the proposal, the household would give written consent for the provider to collect and transmit the household's application to the sponsoring organization by signing the letter sent by the sponsoring organization and returning it, along with the application, to the tier II day care home. To ensure that tier II day care home providers would not be able to view the applications, the Department suggests that the sponsoring organization's letter to the household encourage households to place their applications in a sealed envelope prior to giving it to their provider.

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

Current regulations found at 7 CFR 226.12(a) require that administrative cost payments to a sponsoring organization of day care homes may not exceed the lesser of: (1) Actual expenditures for the costs of administering the CACFP less income to the CACFP, or (2) the amount of administrative costs approved by the State agency in the sponsoring organization's budget, or (3) the sum of the products obtained by multiplying each month the sponsoring organization's number of participating homes by the current administrative payment rate for day care home sponsors. In addition, current regulations specify that administrative payments to a sponsoring organization may not exceed 30 percent of the total amount of administrative payments and food service payments for day care home operations.

Section 334 of the HHFKA amended section 17(f)(3) of the NSLA (42 U.S.C. 1766(f)(3)) to eliminate the "lesser of" cost and budget comparisons for calculating administrative payments to day care home sponsoring organizations. Instead, effective October 1, 2010, administrative reimbursements are determined only by multiplying the number of day care homes under the oversight of each sponsoring organization by the appropriate annually adjusted administrative reimbursement rate(s). As a result of this change, the expenditures for cost, the amount of costs approved in the administrative budget, or the 30 percent restriction no longer apply.

State agencies were advised of this change in a memorandum issued December 22, 2010, *Child Nutrition Reauthorization 2010: Administrative Payments to Family Day Care Home Sponsoring Organizations* (CACFP 06–2011). While this new provision will help streamline administrative

payments to day care home sponsoring organizations and reduce reporting requirements, State agencies and sponsoring organizations are reminded that sponsoring organizations must continue to submit annual budgets that must be approved by the State agency. Further, sponsoring organizations remain responsible for correctly accounting for costs and for maintaining records and sufficient supporting documentation to demonstrate that costs charged to the Program: have actually been incurred; are allowable and allocable to the Program; and comply with applicable Program regulations and policies. State agencies must continue to recover reimbursements received for unallowable costs.

To effect this provision, paragraph (a) of § 226.12, *Administrative payments to sponsoring organizations for day care homes*, would be proposed to be revised to reflect the new formula. The proposal would also make technical changes to the administrative payment rates formula to reflect annual adjustments. These changes are intended only to clarify the base administrative payment rates without making any substantive changes to the adjustment process. In accordance with NSLA, the base reimbursement rates, which were published in the **Federal Register** on January 26, 1982 at 47 FR 3539, are the sum of the products obtained by multiplying each month the sponsoring organization's: Initial 50 day care homes by 42 dollars; Next 150 day care homes by 32 dollars; Next 800 day care homes by 25 dollars; and Additional day care homes by 22 dollars. The administrative payment rates will continue to be adjusted annually to reflect changes in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Department of Labor.

#### *Carryover of Family or Group Day Care Home Sponsoring Organization Administrative Payments*

Section 334 of the HHFKA amends section 17(f)(3) of the NSLA (42 U.S.C. 1766(f)(3)) to permit day care home sponsors to carry over a maximum of 10 percent of administrative payments into the succeeding fiscal year. In accordance with the HHFKA, the 10 percent maximum on the amount of administrative funds that may be carried over must be based on the administrative payments received by the day care home sponsoring organization for the fiscal year. Administrative funds remaining at the end of the fiscal year that exceed 10 percent of that fiscal year's administrative payments must be returned to the State agency. If any remaining carryover funds are not

obligated or expended by the sponsoring organization in the succeeding fiscal year, the sponsor is required to return the remaining funds to the State agency.

State agencies were advised of this new authority in a memorandum issued April 8, 2011, *Child Nutrition Reauthorization 2010: Carry Over of Unused Child and Adult Care Food Program Administrative Payments* (CACFP 18–2011). In that memorandum, State agencies were reminded that day care home sponsoring organizations continue to remain responsible for annual budget submissions, budget amendments, correctly accounting for costs, and maintaining records and sufficient supporting documentation to demonstrate that costs charged to the CACFP have actually been incurred, are allowable and allocable, and comply with all applicable CACFP regulations and policies.

Under this proposal, § 226.6b(c) proposes to require the State agency to ensure that sponsoring organizations of day care homes seeking to carryover administrative funds include, in their annual budget submission for State agency review and approval, estimates of the amount of administrative funds that will be carried over and a description of the proposed purpose(s) for which those funds will be used. Because the final administrative claims will often not be known when the annual budget is submitted to the State agency, the sponsor should use its best estimate of the carryover amount when preparing the annual budget. Thus, when the budget is being prepared and submitted, the carryover estimate would be based on a comparison of the administrative payments the sponsoring organization expects to receive under the homes-times-rates formula with the amount of anticipated allowable administrative costs incurred in the current fiscal year.

Much of the current regulatory budget approval process remains the same. However, this proposed rule would provide that as soon as possible after fiscal year closeout, the sponsoring organization would be required to submit an amended budget to the State agency for review and approval. The amended budget would identify the amount of administrative funds actually carried over and a description of the purpose(s) for which those funds have been or will be used. The sponsoring organization would be required to maintain documentation of obligations and expenditures associated with approved administrative carryover funds for review by the State agency. Consistent with current regulations, it is

still necessary for sponsoring organizations to use accrual accounting for the final claim of each fiscal year so that the end-of-year reconciliation and close-out can be performed.

Under proposed amendments to § 226.7, *State agency responsibilities for financial management*, paragraphs (g) and (j) of that section, State agencies would require the annual budget submission to include an estimate of the requested administrative fund carryover amounts and a description of the proposed purpose(s) for which those funds would be obligated or expended.

In approving a sponsoring organization's carryover request, a State agency would be required to take into consideration whether the day care home sponsoring organization has a financial management system that meets all CACFP requirements and whether the State agency is satisfied that the system is capable of controlling the custody, documentation and disbursement of carryover funds. The State agency would require a sponsoring organization carrying over administrative funds to submit an amended budget for State agency review and approval as soon as possible after fiscal year close-out. The amended budget would identify the amount of administrative funds actually carried over and describe the purpose(s) for which the carryover funds have been or will be used.

In addition, this rule proposes to require each State agency to establish procedures to recover administrative funds from sponsoring organizations of day care homes which are in excess of the 10 percent maximum carryover amount at the end of each fiscal year. Additionally, each State agency would also be required to establish procedures to recover any carryover amount not expended or obligated by the end of the fiscal year following the fiscal year in which the administrative funds were earned. As a result, State agencies would include a review of the documentation supporting carryover requests, obligations and expenditures when conducting a review of a sponsoring organization's administrative costs as currently required under § 226.6(m)(3)(iii). In addition, in implementing this proposed provision, State agencies would maintain a system that monitors the sponsoring organization's documentation of nonprofit status, and ensures that CACFP administrative funds are used principally for the benefit of participants. The accumulation of excessive balances in the sponsor's nonprofit food service account remains inconsistent with

CACFP requirements, as described in FNS Instruction 796-2, Rev. 3, Section VI.

Finally, State agencies and sponsoring organizations are reminded that day care home sponsoring organizations are not required to carry over administrative funds. Any unexpended funds remaining at the end of the fiscal year, which could be carried over into the succeeding fiscal year, may be returned to the State agency at the sponsoring organization's option. In addition, nothing in this provision in any way limits or changes the requirements that a State agency: determine that all institutions are financially viable; establish an overclaim if the sponsor has used CACFP administrative funds improperly; or declare an institution seriously deficient on the basis of its improper use of CACFP administrative funds.

#### IV. Procedural Matters

##### A. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

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

##### B. Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). It has been certified that this rule will not have a significant impact on a substantial number of small entities. While CACFP institutions and State agencies administering CACFP will be affected by this rulemaking, the economic effect will not be significant. This rule is expected to reduce administrative burdens and provide additional flexibility.

##### C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose on State, local and Tribal governments or the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

##### D. Executive Order 12372

The Program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.558. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V, and related Notice published at 48 FR 29115, June 24, 1983, this is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

##### E. Executive Order 13132

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

##### F. Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, "Civil Justice Reform." Although the provisions of this rule are not expected

to conflict with any State or local law, regulations, or policies, the rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted.

**G. Civil Rights Impact Analysis**

This proposed rule has been reviewed in accordance with Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts this rule might have on children on the basis of age, race, color, national origin, sex, or disability. A careful review of the rule revealed that the rule's intent does not affect the participation of protected individuals in CACFP.

**H. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320), requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This is a new collection. The new provisions in this rule, which decreases current burden hours, by 595 will be merged into CACFP, OMB Control Number #0584-0055, expiration date 8/31/2013. The current collection burden inventory for CACFP is 7,006,434. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, the Department will publish a separate

action in the **Federal Register** announcing OMB's approval.

Comments on the information collection in this proposed rule must be received by June 8, 2012. Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Lynn Rodgers-Kuperman, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection requirements, please contact Lynn Rodgers-Kuperman at the address indicated above. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

*Title:* Child and Adult Care Food Program: Amendments Related to the Healthy Hunger-Free Kids Act of 2010.

*OMB Number:* 0584-New.

*Expiration Date:* Not Yet Determined.

*Type of Request:* New Collection.

*Abstract:* This rule proposes to codify several provisions of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) affecting the management of CACFP.

The Department is proposing to: require institutions to submit an initial CACFP application to the State agency and, in subsequent years, periodically update the information in lieu of submitting a new application; require sponsoring organizations to vary the timing of reviews of sponsored facilities; require State agencies to develop and provide for the use of a standard permanent agreement between sponsoring organizations and day care centers; allow tier II day care homes to collect household income information and transmit it to the sponsoring organization; modify the method of determining administrative payments to sponsoring organizations of day care homes by basing payments on a formula; and allow sponsoring organizations of day care homes to carry over up to 10 percent of their administrative funding from the previous fiscal year into the next fiscal year. These changes were effective October 1, 2010. This rule also proposes to incorporate several changes to the application and renewal process which are expected to improve the management of CACFP and to make a number of miscellaneous technical changes.

The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

*Respondents for this Proposed Rule:* (Business' for and not-for-profit) Institutions.

*Estimated Number of Respondents for this Proposed Rule:* 250.

*Estimated Number of Responses per Respondent for this Proposed Rule:* (1).

*Estimated Total Annual Responses:* 250.

*Estimated Total Annual Burden on Respondents for this Proposed Rule:* (595)\*.

*\*This represents an overall decrease from the existing burden for institutions.*

**ESTIMATED ANNUAL BURDEN FOR 0584—NEW, CHILD AND ADULT CARE FOOD PROGRAM 7 CFR 226**

| Reporting   |                 |                                 |                       |                          |                             |   |
|---|-----------------|---------------------------------|-----------------------|--------------------------|-----------------------------|---|
|   | Section         | Estimated number of respondents | Frequency of response | Average annual responses | Average burden per response | Annual burden hours   |
| Each new institution must submit to the State agency with its application all information required for its approval. Renewing institutions must certify that they are capable of operating the Program. | 7 CFR 226.15(b) | 250                             | 1                     | 250                      | 8                           | 2000<br><i>*Approved in OMB# 0584-0055, remains unchanged</i> |

ESTIMATED ANNUAL BURDEN FOR 0584—NEW, CHILD AND ADULT CARE FOOD PROGRAM 7 CFR 226—Continued

| Reporting  |         |                                 |                       |                          |                             |   |
|--|---------|---------------------------------|-----------------------|--------------------------|-----------------------------|---|
|  | Section | Estimated number of respondents | Frequency of response | Average annual responses | Average burden per response | Annual burden hours   |
|  |         | (119)                           | (1)                   | (119)                    | (5)                         | (595)<br><i>**decrease of 595 from existing burden as a result of eliminating burden associated with renewing institutions.</i> |
| Total Reporting for Proposed Rule.                                 |         | (119)                           | 1                     | (119)                    | (5)                         | (595)   |
| Total Existing Reporting Burden for 0584–0055, Part 226.           |         |                                 |                       |                          |                             | 6,274,964   |
| Total Reporting Burden Decrease with Proposed Rule.                |         |                                 |                       |                          |                             | – 595   |
| Total Reporting Burden for 0584–0055, Part 226 with Proposed Rule. |         |                                 |                       |                          |                             | 6,274,369   |

Prior to the issuance of this Rule entitled “Child and Adult Care Food Program: Amendments Related to the Healthy Hunger-Free Kids Act of 2010,” 7 CFR 226.15(b) required that, all institutions submit to the State agency with its application all information required for its approval as set forth in 226.6(b) and 226.6(f). This rule

eliminates the requirement for renewing institutions to submit an annual application for renewal; however, these institutions must demonstrate that they are capable of operating the Program in accordance with this part as set forth in § 226.6b(b).

Therefore, the burden associated with the renewing institutions to submit an

annual application has been removed as a result of this Rule. A program adjustment will be made to the 7 CFR Part 226 Child and Adult Care Food Program information collection package (OMB control number 0584–0055) prior to its renewal date of August 31, 2013.

RECORDKEEPING

|   | Section             | Estimated number of respondents | Frequency of response | Average annual responses | Average burden per response | Annual burden hours |
|---|---------------------|---------------------------------|-----------------------|--------------------------|-----------------------------|---------------------|
| Sponsoring organizations maintain agreements with unaffiliated sponsored centers. | 7 CFR 226.16(h)(1). | 200                             | 1                     | 200                      | *0                          | *0                  |
| Total Recordkeeping for Proposed Rule.  |                     | 200                             | 1                     | 200                      | *0                          | *0                  |
| Total Existing Recordkeeping Burden for 0584–0055, Part 226.                      |                     |                                 |                       |                          |                             | 731,470             |
| Total Recordkeeping Burden for 0584–0055, Part 226 with Proposed Rule.            |                     |                                 |                       |                          |                             | 731,470             |

\* The amount of additional burden is negligible.

7 CFR 226.6, 226.15 and 226.16 require that, in order to participate in CACFP, State agencies and institutions must maintain records to demonstrate compliance with Program requirements. The regulations further require that State agencies and institutions maintain records for a period of three years.

SUMMARY OF BURDEN (OMB #0584–NEW)

|  |     |
|--|-----|
| Total number of respondents .....                | 250 |
| Average number of responses per respondent ..... | (1) |
| Total annual responses .....                     | 250 |

SUMMARY OF BURDEN (OMB #0584–NEW)—Continued

|   |           |
|---|-----------|
| Average hours per response .....                                    | 8         |
| Total burden hours for part 226 with proposed rule .....            | 7,005,839 |
| Current OMB inventory for part 226 .....                            | 7,006,434 |
| Difference (new burden decrease requested with proposed rule) ..... | *(595)    |

\* Burden is decreased from existing burden (595) due to the elimination of burden associated with renewing institutions.

I. E-Government Act Compliance

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

J. Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications,

including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

In the spring of 2011, FNS offered opportunities for consultation with Tribal officials or their designees to discuss the impact of the HHFKA on tribes or Indian Tribal governments. The consultation sessions were coordinated by FNS and held on the following dates and locations:

1. HHFKA Consultation Webinar & Conference Call—April 12, 2011
2. HHFKA Consultation In-Person—Rapid City, SD—March 23, 2011
3. HHFKA Consultation Webinar & Conference Call—June 22, 2011
4. Tribal Self-Governance Annual Conference In-Person Consultation in Palm Springs, CA—May 2, 2011
5. National Congress of American Indians Mid-Year Conference In-Person Consultation, Milwaukee, WI—June 14, 2011

The five consultation sessions in total provided the opportunity to address Tribal concerns related to school meals. There were no comments about this regulation during any of the aforementioned Tribal Consultation sessions. Reports from these consultations are part of the USDA annual reporting on Tribal consultation and collaboration. FNS will respond in a timely and meaningful manner to Tribal government requests for consultation concerning this rule. Currently, FNS provides regularly scheduled quarterly consultation sessions through the end of FY2012 as a venue for collaborative conversations with Tribal officials or their designees.

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

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

Accordingly, 7 CFR part 226 is proposed to be amended as follows:

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

1. The authority citation for 7 CFR Part 226 continues to read as follows:

**Authority:** Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.2,

a. Revise definitions of “*For-profit center*”, “*New institution*”, “*Renewing institution*”, and “*State agency list*”; and

b. Add new definitions “*Less-than-arms-length transaction*”, “*Participating institution*”, and “*Sponsored center*”.

The additions and revisions read as follows:

#### § 226.2 Definitions.

\* \* \* \* \*

*For-profit center* means a child care center, outside-school-hours care center, or adult day care center providing nonresidential care to adults or children that does not qualify for tax-exempt status under the Internal Revenue Code of 1986. For-profit centers serving adults must meet the criteria described in paragraph (a) of this definition. For-profit centers serving children must meet the criteria described in paragraphs (b)(1) or (b)(2) of this definition, except that children who only participate in the at-risk afterschool snack and/or meal component of the Program must not be considered in determining the percentages under paragraphs (b)(1) or (b)(2) of this definition.

(a) A for-profit center serving adults must meet the definition of *Adult day care center* as defined in this section and, during the calendar month preceding initial application and during any month that it claims

reimbursement, the center receives compensation from amounts granted to the States under title XIX or title XX and twenty-five percent of the adults enrolled in care are beneficiaries of title XIX, title XX, or a combination of titles XIX and XX of the Social Security Act.

(b) A for-profit center serving children must meet the definition of *Child care center* or *Outside-school-hours care center* as defined in this section and one of the following conditions during the calendar month preceding initial application and during any month that it claims reimbursement:

(1) Twenty-five percent of the children in care (enrolled or licensed capacity, whichever is less) are eligible for free or reduced-price meals; or

(2) Twenty-five percent of the children in care (enrolled or licensed capacity, whichever is less) receive benefits from title XX of the Social Security Act and the center receives compensation from amounts granted to the States under title XX.

\* \* \* \* \*

*Less-than-arms-length transaction* means a transaction under which one party to the transaction is able to control or substantially influence the actions of

the other(s), as defined in FNS Instruction 796–2 (“Financial Management—Child and Adult Care Food Program”).

\* \* \* \* \*

*New institution* means an institution making an initial application to participate in the Program or an institution applying to participate in the Program after a lapse in participation.

\* \* \* \* \*

*Participating institution* means an institution that holds a current Program agreement with the State agency to operate the Program. This includes renewing institutions.

\* \* \* \* \*

*Renewing institution* means an institution that is participating in the Program at the time it submits renewal information.

\* \* \* \* \*

*Sponsored center* means a child care center, at-risk afterschool care center, adult day care center, emergency shelter, or 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:

(a) An affiliated center is a part of the same legal entity as CACFP sponsoring organization; or

(b) An unaffiliated center is legally distinct from the sponsoring organization.

\* \* \* \* \*

*State agency list* means an actual paper or electronic list, or the retrievable paper records, maintained by the State agency, that includes a synopsis of information concerning seriously deficient institutions and providers terminated for cause in that State. The list must be made available to FNS upon request, and must include the following information:

(a) Institutions determined to be seriously deficient by the State agency, including the names and mailing addresses of the institutions, the basis for each serious deficiency determination, and the status of the institutions as they move through the possible subsequent stages of corrective action, proposed termination, suspension, agreement termination, and/or disqualification, as applicable;

(b) Responsible principals and responsible individuals who have been disqualified from participation by the State agency, including their full legal names and any other names previously used, mailing addresses, and dates of birth; and

(c) Day care home providers whose agreements have been terminated for cause by a sponsoring organization in

the State, including their full legal names and any other names previously used, mailing addresses, and dates of birth.

\* \* \* \* \*

#### § 226.4 [Amended]

3. In § 226.4, amend paragraph (f) by revising the citation “§ 226.12(a)(3)” to read “§ 226.12(a)”.

4. In § 226.6:

a. Remove paragraph (b) introductory text and revise paragraphs (b)(1) through (3) and (b)(4)(i);

b1. Amend paragraph (b)(4)(ii) introductory text by removing the words “,except that:” and adding a period in their place; and by adding a third sentence.

b2. Remove paragraphs (b)(4)(ii)(A) through (C);

c. Amend paragraph (c)(1)(i) by removing the words “paragraph (b) of this section and in §§ 226.15(b) and 226.16(b)” in the first sentence and adding the citation “§ 226.6a” in its place;

d. Amend paragraph (c)(1)(ii) introductory text by revising the first sentence;

e. Amend paragraph (c)(1)(iii)(A)(8) by adding the words “full legal names and any other names previously used and” both after the phrase “possess the” and after the word “person’s”;

f. Amend paragraph (c)(1)(iii)(B)(1)(i) by removing the word “defer” and adding the word “deferred” in its place;

g. Amend paragraphs (c)(1)(iii)(C) introductory text and (c)(1)(iii)(C)(1) by removing the words “the institution’s” each time they appear and adding the words “the new institution’s” in their place ;

h. Amend paragraph (c)(1)(iii)(E) in the last sentence by adding the words “full legal names and any other names previously used,” before the word “mailing”.

i. Revise paragraph (c)(2);

j. Revise paragraphs (c)(3)(ii) introductory text and (c)(3)(ii)(A);

k. Redesignate paragraphs (c)(3)(ii)(B) through (c)(3)(ii)(U) as paragraphs (c)(3)(ii)(C) through (c)(3)(ii)(V) and add new paragraph (c)(3)(ii)(B);

l. Amend newly redesignated paragraph (c)(3)(ii)(D) by removing the words “paragraphs (b)(1)(xviii) and (b)(2)(vii) of this section” and adding the citation “§ 226.6a(b)(6)” in its place;

m. Amend newly redesignated paragraph (c)(3)(ii)(U) by removing the period at the end of the first sentence and adding “, as defined in paragraph (c)(1)(ii)(A) of this section; or” in its place; and by removing the second sentence;

n. Amend paragraph (c)(3)(iii)(A)(7) by adding the words “full legal names

and any other names previously used and the” before the word “date” each time it appears in the paragraph;

o. Revise paragraph (c)(3)(iii)(B);

p. Amend paragraph (c)(3)(iii)(C)(4) by removing the words “application denial” and adding the words “proposed termination” in its place;

q. Amend paragraph (c)(3)(iii)(D) introductory text by removing the phrase “institution must renew its application, or its” and adding the word “institution’s” in its place;

r. Revise paragraph (c)(3)(iii)(D)(2);

s. Amend paragraph (c)(3)(iii)(D)(3) by removing the semicolon at the end of the sentence and adding a period in its place;

t. Amend paragraph (c)(3)(iii)(E)(3) by adding the words “full legal names and any other names previously used,” before the word “mailing”;

u. Amend paragraph (c)(5)(i)(C)(3) by adding the words “full legal names and any other names previously used,” before the word “mailing”;

v. Amend the second sentence of paragraph (c)(7)(ii) by removing the phrase “paragraphs (b)(1)(xii) and (b)(2)(ii) of this section” and adding the citation “§ 226.6a(b)(2)” in its place;

w. Amend the first sentence of paragraph (c)(7)(iv)(A) by removing the phrase “paragraphs (b)(1)(xii) and (b)(2)(ii) of this section” and adding the citation “§ 226.6a(b)(2)” in its place; by removing the word “must” the first time it appears; by removing the words “or renewing” between the words “new” and “institution”; and by removing the citation “(c)(3)(ii)(B)” and adding the citation “(c)(3)(ii)(C)” in its place;

y. Amend paragraph (c)(7)(iv)(B) by removing the phrase “§ 226.16(b) and paragraphs (b)(1)(xii) and (b)(2)(ii) of this section” and adding the citation “§ 226.6a(b)(2)” in its place;

z. Amend paragraph (c)(7)(C) by removing the phrase “§ 226.16(b) and paragraphs (b)(1)(xii) and (b)(2)(ii) of this section” and adding the citation “§ 226.6a(b)(2)” in its place;

aa. Amend paragraph (c)(8)(i)(B) by removing the word “names” and adding the words “full legal names and any other names previously used” in its place;

bb. Amend paragraph (c)(8)(i)(C) by removing the word “names” and adding the words “full legal names and any other names previously used” in its place;

cc. Amend paragraph (c)(8)(ii) by removing the word “name” and adding the words “full legal names and any other names previously used” in its place;

dd. Revise paragraph (f);

ee. Revise paragraph (k)(2)(i);

ff. Amend paragraph (k)(2)(iii) by removing the citation “(c)(2)(iii)(C),” and removing the words “renewing institutions,”;

gg. Amend paragraph (k)(2)(iv) by removing the citation “(c)(2)(iii)(C),” and “, renewing,”;

hh. Amend paragraph (k)(3)(ii) by removing the citation “(c)(2)(iii)(A),” removing “, renewing,”; and removing the word “participating” the last time it appears;

ii. Amend paragraph (k)(3)(iv) by removing the citation “(c)(2)(iii)(E),” and removing “, renewing,”;

jj. Revise paragraph (k)(9);

kk. Amend paragraph (k)(10)(iii) by removing the words “denial of a renewing institution’s application,” and removing the citation “(c)(2)(iii)(D),”;

ll. Amend paragraph (m)(3), by redesignating paragraphs (m)(3)(vii) through (xii) as paragraphs (viii) through (xiii), respectively;

mm. Add new paragraph (m)(3)(vii);

nn. Amend newly redesignated paragraph (m)(3)(ix) by removing the semicolon and adding at the end, the words “, including whether the timing of its facility reviews was varied and unpredictable, as required by § 226.16(d)(4)(iii);”;

oo. Revise paragraph (p).

The revisions and additions read as follows:

#### § 226.6 State agency administrative responsibilities.

\* \* \* \* \*

(b) *Program applications and requirements.* (1) *Application requirements for new institutions.* Each State agency must establish application review procedures, as described in § 226.6a, to determine the eligibility of new institutions and facilities for which applications are submitted by sponsoring organizations. The State agency must enter into written agreements with institutions in accordance with paragraph (b)(4) of this section.

(2) *Information submission requirements for renewing institutions.* Each State agency must establish renewal information review procedures, as described in § 226.6b, to determine the continued eligibility of renewing institutions.

(3) *State agency notification requirements.* (i) Any new institution applying for participation in the

Program must be notified in writing of approval or disapproval by the State agency, within 30 calendar days of the State agency's receipt of a complete application. Whenever possible, State agencies should provide assistance to institutions that have submitted an incomplete application. Any disapproved applicant institution or day care home must be notified of the reasons for its disapproval and its right to appeal under paragraph (k) or (l), respectively, of this section.

(ii) Any renewing institution must be provided written notification indicating whether it has completely and sufficiently met all renewal information requirements within 30 days of the submission of renewal information.

(4) \* \* \*

(i) The State agency must require each institution that has been approved for participation in the Program to enter into an agreement governing the rights and responsibilities of each party. The State agency may allow a renewing institution to amend its existing Program agreement in lieu of executing a new agreement. The existence of a valid agreement, however, does not eliminate the need for a renewing institution to comply with the information submission requirements and related provisions of § 226.6b.

(ii) \* \* \* The State agency and an institution that is a school food authority must enter into a single permanent agreement for all child nutrition programs administered by the school food authority and the State agency.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) \* \* \* The list of serious deficiencies is not identical for each category of institution (new or participating) because the type of information likely to be available to the State agency is different for new and participating institutions.\* \* \*

\* \* \* \* \*

(2) *Insufficient renewal information submissions.* If an institution submits renewal information that is incomplete, deficient, unapprovable or contains false information, this is considered a serious deficiency, and the State agency should follow the procedures for serious deficiencies committed by participating institutions outlined in paragraph (c)(3)(iii) of this section.

(3) \* \* \*

(ii) *List of serious deficiencies for participating institutions.* The list of serious deficiencies is not identical for each category of institution (new or participating) because the type of

information likely to be available to the State agency is different for new and participating institutions. Serious deficiencies for participating institutions are:

(A) Submission of false information on the institution's application or in its annual renewal submission, including but not limited to a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity, as defined in paragraph (c)(1)(ii)(A) of this section.

(B) Failure to provide complete, adequate, or approvable information as part of the information submission process for renewing institutions;

\* \* \* \* \*

(iii) \* \* \*

(B) *Successful corrective action.* (1) If corrective action has been taken to fully and permanently correct the serious deficiency(ies) within the allotted time and to the State agency's satisfaction, the State agency must notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the State agency has temporarily deferred its serious deficiency determination.

(2) If corrective action is complete for the institution but not for all of the responsible principals and responsible individuals (or vice versa), the State agency must:

(i) Continue with the actions (as set forth in paragraph (c)(3)(iii)(C) of this section) against the remaining parties; and

(ii) At the same time the notice is issued, the State agency must also update the State agency list to indicate that the serious deficiency(ies) has(ve) been corrected and provide a copy of the notice to the appropriate FNSRO.

(3) If the State agency initially determines that the institution's corrective action is complete, but later determines that the serious deficiency(ies) has recurred, the State agency must move immediately to issue a notice of intent to terminate and disqualify the institution, in accordance with paragraph (c)(2)(iii)(C) of this section.

\* \* \* \* \*

(D) \* \* \*

(2) During this period, the State agency must base administrative payments on the formula set forth in § 226.12(a); and

\* \* \* \* \*

(7) \* \* \*

(iii) \* \* \* As noted in § 226.6a(b)(2), a State agency is prohibited from

approving an application submitted by a sponsoring organization on behalf of a sponsored facility, and either the facility or any of its principals is on the National disqualified list.

\* \* \* \* \*

(f) *Miscellaneous responsibilities.* State agencies must require institutions to comply with the applicable provisions of this part and must provide or collect the information specified in this paragraph. Each State agency must:

(1) Annually inform institutions that are pricing programs of their responsibility to ensure that free and reduced-price meals are served to participants unable to pay the full price;

(2) Annually provide to all institutions a copy of the income standards to be used by institutions for determining the eligibility of participants for free and reduced-price meals under the Program;

(3) Annually require each institution to issue a media release, unless the State agency has issued a Statewide media release on behalf of all its institutions;

(4) Comply with the following requirements for tiering of day care homes:

(i) Coordinate with the State agency that administers the National School Lunch Program (the NSLP State agency) to ensure the receipt of a list of schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced-price meals. The State agency must provide the list of schools to sponsoring organizations of day care homes by February 15th each year unless the NSLP State agency has elected to base data for the list on a month other than October. In that case, the State agency must provide the list to sponsoring organizations of day care homes within 15 calendar days of its receipt from the NSLP State agency.

(ii) For tiering determinations of day care homes that are based on school or census data, the State agency must ensure that sponsoring organizations of day care homes use the most recent available data, as described in § 226.15(f).

(iii) For tiering determinations of day care homes that are based on the provider's household income, the State agency must ensure that sponsoring organizations annually determine the eligibility of each day care home, as described in § 226.15(f).

(iv) The State agency must provide all sponsoring organizations of day care homes in the State with a listing of State-funded programs, participation in which by a parent or child will qualify a meal served to a child in a tier II home for the tier I rate of reimbursement.

(v) The State agency must require each sponsoring organization of day care homes to submit to the State agency a list of day care home providers receiving tier I benefits on the basis of their participation in the SNAP. Within 30 days of receiving this list, the State agency will provide this list to the State agency responsible for the administration of the SNAP.

(vi) As described in § 226.15(f), tiering determinations are valid for five years if based on school data. The State agency must ensure that the most recent available data are used if the determination of a day care home's eligibility as a tier I day care home is made using school data. The State agency must not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated school data. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that a day care home is no longer in a qualified area.

(5) Comply with the following requirements for determining the eligibility of at-risk afterschool care centers:

(i) Coordinate with the NSLP State agency to ensure the receipt of a list of elementary, middle, and high schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced-price meals. The State agency must provide the list of elementary, middle, and high schools to independent at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers upon request. The list must represent data from the preceding October, unless the NSLP State agency has elected to base data for the list on a month other than October. If the NSLP State agency chooses a month other than October, it must do so for the entire State.

(ii) The State agency must determine the area eligibility for each independent at-risk afterschool care center and each sponsored at-risk afterschool center based on the documentation submitted by the sponsoring organization in accordance with § 226.15(g). The State agency must use the most recent data available, as described in paragraph (f)(5)(i) of this section. The State agency must use attendance area information that it has obtained, or verified with the appropriate school officials to be current, within the last school year. Area eligibility determinations are valid for five years for at-risk afterschool care centers that are already participating in the Program. The State agency may determine the date in the fifth year

when the next five-year cycle of area eligibility will begin. The State agency must not routinely require annual redeterminations of area eligibility based on updated school data during the five-year period. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that an at-risk afterschool care center is no longer area eligible.

(iii) The State agency must determine whether the afterschool care programs of at-risk afterschool care centers meet the at-risk eligibility requirements of § 226.17a(b) before the centers begin participating in the Program.

(iv) The State agency must determine whether institutions already participating as at-risk afterschool care centers continue to meet the eligibility requirements, described in § 226.17a(b).

(6) Upon receipt of census data from FNS (on a decennial basis), the State agency must provide each sponsoring organization of day care homes with census data showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced-price meals.

(7) At intervals and in a manner specified by the State agency, but not more frequently than annually, the State agency may:

(i) Require independent centers to submit a budget with sufficiently detailed information and documentation to enable the State agency to make an assessment of the independent center's qualifications to manage Program funds. Such budget must demonstrate that the independent center will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796-2 ("Financial Management—Child and Adult Care Food Program"), and parts 3015, 3016, and 3019 of this title and applicable Office of Management and Budget circulars;

(ii) Request institutions to report their commodity preference;

(iii) Require a private nonprofit institution to submit evidence of tax exempt status in accordance with § 226.15(a);

(iv) Require for-profit institutions to submit documentation on behalf of their centers of:

(A) Eligibility of at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) for free or reduced-price meals; or

(B) Compensation received under title XX of the Social Security Act of nonresidential day care services and certification that at least 25 percent of children in care (enrolled or licensed

capacity, whichever is less) were title XX beneficiaries during the most recent calendar month.

(v) Require for-profit adult care centers to submit documentation that they are currently providing nonresidential day care services for which they receive compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants in each such center during the most recent calendar month were title XIX or title XX beneficiaries;

(vi) Request each institution to indicate its choice to receive all, part or none of advance payments, if the State agency chooses to make advance payments available; and

(vii) Perform verification in accordance with § 226.23(h) and paragraph (m)(4) of this section. State agencies verifying the information on free and reduced-price applications must ensure that verification activities are conducted without regard to the participant's race, color, national origin, sex, age, or disability.

\* \* \* \* \*

(k) \* \* \*

(2) \* \* \*

(i) *Application denial.* Denial of a new institution's application for participation (see § 226.6a, for State agency review of an institution's application, and paragraph (c)(1) of this section, for State agency denial of a new institution's application);

\* \* \* \* \*

(9) *Abbreviated administrative review.* The State agency must limit the administrative review to a review of written submissions concerning the accuracy of the State agency's determination if the application was denied or the State agency proposes to terminate the institution's agreement because:

(i) The information submitted on the application was false (refer to paragraphs (c)(1)(ii)(A) and (c)(3)(ii)(A) of this section);

(ii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National disqualified list (refer to § 226.6a(b)(2));

(iii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program (refer to paragraph (c)(3)(ii)(T) of this section and § 226.6a(b)(3)); or

(iv) The institution, one of its sponsored facilities, or one of the

principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity (refer to paragraph (c)(3)(ii)(U) of this section and § 226.6a(b)(4)).

\* \* \* \* \*

(m) \* \* \*

(3) \* \* \*

(vii) Compliance with the requirements for submitting and ensuring the accuracy of the annual renewal information;

\* \* \* \* \*

(p) *Sponsoring organization agreement.* (1) Each State agency shall 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 participating in the Program under such organization. The agreement shall specify the rights and responsibilities of both parties. The State agency may, at the request of the sponsor, approve an agreement developed by the sponsor. Nothing in this paragraph shall be construed to limit the ability of the sponsoring organization to suspend or terminate the permanent agreement in accordance with § 226.16(l).

(2) The State agency must also include in this agreement its policy to restrict transfers of day care homes between sponsoring organizations. The policy must restrict the transfers to no more frequently than once per year, except under extenuating circumstances, such as termination of the sponsoring organization's agreement or other circumstances defined by the State agency.

\* \* \* \* \*

5. Add §§ 226.6a and 226.6b to read as follows:

**§ 226.6a State agency application requirements for new institutions.**

(a) *Application procedures for new institutions.* Each State agency must establish application procedures to determine the eligibility of new institutions under this part. For new private nonprofit and for-profit child care institutions, such procedures must also include a pre-approval visit by the State agency to confirm the information in the institution's application and to further assess the institution's ability to manage the Program. In addition, the State agency's application review procedures must ensure that the institution complies with the provisions in this section.

(b) *Institution application requirements.* The State agency's application review procedures must ensure that the following information is

included in a new institution's application:

(1) *Budget.* The State agency must review and approve each institution's budget. The budget must demonstrate the institution's ability to manage Program funds in accordance with § 226.7, FNS Instruction 796–2, ("Financial Management—Child and Adult Care Food Program"), parts 3015, 3016, and 3019 of this title, and applicable Office of Management and Budget circulars. If the institution does not intend to use non-CACFP funds to support any required CACFP functions, the institution's budget must identify a source of non-Program funds that could be used to pay overclaims or other unallowable costs. If the institution intends to use any non-Program resources to meet CACFP requirements, these non-Program funds should be accounted for in the institution's budget, and the institution's budget must identify a source of non-Program funds that could be used to pay overclaims or other unallowable costs. Other information that must be in the budget includes:

(i) For sponsors, projected CACFP administrative earnings and expenses.

(ii) For sponsoring organizations of centers, all administrative costs, whether incurred by the sponsoring organization or its sponsored centers. If at any point a sponsoring organization determines that the meal reimbursements estimated to be earned during the budget year will be lower than that estimated in its administrative budget, the sponsoring organization must amend its administrative budget to stay within 15 percent of meal reimbursements estimated or actually earned during the budget year, unless the State agency grants a waiver in accordance with § 226.7(g)(1). Failure to do so will result in appropriate fiscal action in accordance with § 226.14(a).

(2) *Presence on the National disqualified list.* If an institution or one of its principals is on the National disqualified list and submits an application, the State agency may not approve the application. If a sponsoring organization submits an application on behalf of a facility, and either the facility or any of its principals is on the National disqualified list, the State agency may not approve the application. In accordance with § 226.6(k)(3)(vii), in this circumstance, the State agency's refusal to consider the application is not subject to administrative review.

(3) *Ineligibility for other publicly funded programs.* (i) *General.* A State agency is prohibited from approving an institution's application if, during the past seven years, the institution or any

of its principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or determined eligible for, that program, including the payment of any debts owed.

(ii) State agencies must collect from institutions:

(A) A statement listing the publicly funded programs in which the institution and its principals have participated in the past seven years; and

(B) A certification that, during the past seven years, neither the institution nor any of its principals have been declared ineligible to participate in any other publicly funded program by reason of violating that program's requirements; or

(C) In lieu of the certification, documentation that the institution or the principal previously declared ineligible was later fully reinstated in, or determined eligible for, the program, including the payment of any debts owed.

(iii) *Follow-up.* If the State agency has reason to believe that the institution or its principals were determined ineligible to participate in another publicly funded program by reason of violating that program's requirements, the State agency must follow up with the entity administering the publicly funded program to gather sufficient evidence to determine whether the institution or its principals were, in fact, determined ineligible.

(4) *Information on criminal convictions.* (i) A State agency is prohibited from approving an institution's application if any of the institution's principals have been convicted of any activity during the past seven years that indicated a lack of business integrity, as defined in § 226.6(c)(1)(ii)(A); and

(ii) State agencies must collect from institutions a certification that neither the institution nor any of its principals have been convicted of any activity during the past seven years that indicated a lack of business integrity, as defined in § 226.6(c)(1)(ii)(A);

(5) *Certification of truth of applications and submission of names and addresses.* State agencies must collect from institutions a certification that all information on the application is true and correct, along with the full legal names and any other names previously used, mailing address, and date of birth of the institution's executive director and chairman of the board of directors or, in the case of a for-profit center that does not have an

executive director or is not required to have a board of directors, the owner of the for-profit center;

(6) *Compliance with performance standards.* State agencies must collect from each new institution, information sufficient to document that it is financially viable, is administratively capable of operating the Program in accordance with this part, and has internal controls in effect to ensure accountability. To document this, any new institution must demonstrate in its application that it is capable of operating in conformance with the following performance standards. The State agency must only approve the applications of those new institutions that meet these performance standards, and must deny the applications of those new institutions that do not meet the standards. In ensuring compliance with these performance standards, the State agency should use its discretion in determining whether the institution's application, in conjunction with its past performance in CACFP, establishes to the State agency's satisfaction that the institution meets the following performance standards.

(i) *Performance Standard 1—Financial viability and financial management.* The new institution must be financially viable. Program funds must be expended and accounted for in accordance with the requirements of this part, FNS Instruction 796-2 ("Financial Management—Child and Adult Care Food Program"), and parts 3015, 3016, and 3019 of this title. To demonstrate financial viability, the new institution must document that it meets the following criteria:

(A) *Description of need and recruitment.* A new sponsoring organization must demonstrate in its management plan that its participation will help ensure the delivery of Program benefits to otherwise unserved facilities or participants, in accordance with criteria developed by the State agency pursuant to paragraph (c)(6) of this section. A new sponsoring organization must demonstrate that it will use appropriate practices for recruiting facilities, consistent with § 226.6(p) and any State agency requirements;

(B) *Fiscal resources and financial history.* A new institution must demonstrate that it has adequate financial resources to operate CACFP on a daily basis, has adequate sources of funds to continue to pay employees and suppliers during periods of temporary interruptions in Program payments and/or to pay debts when fiscal claims have been assessed against the institution, and can document financial viability

(for example, through audits, financial statements, etc.); and

(C) *Budgets.* Costs in the institution's budget must be necessary, reasonable, allowable, and appropriately documented;

(ii) *Performance Standard 2—Administrative capability.* The new institution must be administratively capable. Appropriate and effective management practices must be in effect to ensure that the Program operates in accordance with this part. To demonstrate administrative capability, the new institution must document that it meets the following criteria:

(A) Has an adequate number and type of qualified staff to ensure the operation of the Program in accordance with this part;

(B) If a sponsoring organization, documents in its management plan that it employs staff sufficient to meet the ratio of monitors to facilities, taking into account the factors that the State agency will consider in determining a sponsoring organization's staffing needs, as set forth in (c)(1) of this section; and

(C) If a sponsoring organization has Program policies and procedures in writing that assign Program responsibilities and duties, and ensure compliance with civil rights requirements; and

(iii) *Performance Standard 3—Program accountability.* The new institution must have internal controls and other management systems in effect to ensure fiscal accountability and to ensure that the Program will operate in accordance with the requirements of this part. To demonstrate Program accountability, the new institution must document that it meets the following criteria:

(A) *Governing board of directors.* Has adequate oversight of the Program by an independent governing board of directors as defined at § 226.2;

(B) *Fiscal accountability.* Has a financial system with management controls specified in writing. For new sponsoring organizations, these written operational policies must assure:

(1) Fiscal integrity and accountability for all funds and property received, held, and disbursed;

(2) The integrity and accountability of all expenses incurred;

(3) That claims will be processed accurately, and in a timely manner;

(4) That funds and property are properly safeguarded and used, and expenses incurred, for authorized Program purposes; and

(5) That a system of safeguards and controls is in place to prevent and detect improper financial activities by employees;

(C) *Recordkeeping.* Maintains appropriate records to document compliance with Program requirements, including budgets, accounting records, approved budget amendments, and, if a sponsoring organization, management plans and appropriate records on facility operations;

(D) *Sponsoring organization operations.* If a new sponsoring organization, documents in its management plan that it will:

(1) Provide adequate and regular training of sponsoring organization staff and sponsored facilities in accordance with §§ 226.15(e)(12) and (e)(14) and 226.16(d)(2) and (d)(3);

(2) Perform monitoring in accordance with § 226.16(d)(4), to ensure that sponsored facilities accountably and appropriately operate the Program;

(3) If a sponsor of day care homes, accurately classify day care homes as tier I or tier II in accordance with § 226.15(f); and

(4) Have a system in place to ensure that administrative costs funded from Program reimbursements do not exceed regulatory limits set forth in §§ 226.6a(b)(1) and 226.12(a).

(E) *Meal service and other operational requirements.* Independent centers and facilities will follow practices that result in the operation of the Program in accordance with the meal service, recordkeeping, and other operational requirements of this part. These practices must be documented in the independent center's application or in the sponsoring organization's management plan and must demonstrate that independent centers or sponsored facilities will:

(1) Provide meals that meet the meal patterns set forth in § 226.20;

(2) Comply with licensing or approval requirements set forth in § 226.6(d);

(3) Have a food service that complies with applicable State and local health and sanitation requirements;

(4) Comply with civil rights requirements;

(5) Maintain complete and appropriate records on file; and

(6) Claim reimbursement only for eligible meals.

(7) *Nondiscrimination statement.*

Institutions must submit their nondiscrimination policy statement and a media release, unless the State agency has issued a Statewide media release on behalf of all institutions;

(8) *Documentation of tax-exempt status.* All private nonprofit institutions must document their tax-exempt status; and

(9) *Preference for commodities or cash-in-lieu of commodities.* Institutions must state their preference to receive

commodities or cash-in-lieu of commodities.

(c) *Sponsoring organization application requirements.* In addition to the application requirements contained in paragraph (b) of this section, the State agency's application review procedures must ensure that the following information is included in a new sponsoring organization's application:

(1) *Management plan.* The State agency must establish factors, consistent with this section, that it will consider in determining whether a new sponsoring organization has sufficient staff to perform required monitoring responsibilities at all of its sponsored facilities. State agencies must collect from sponsoring organizations a complete management plan that includes:

(i) Detailed information on the organization's management and administrative structure;

(ii) A list or description of the staff assigned to Program monitoring. Each sponsoring organization of day care homes must document that, to perform monitoring, it will employ the equivalent of one full-time staff person for each 50 to 150 day care homes it sponsors. A sponsoring organization of centers must document that, to perform monitoring, it will employ the equivalent of one full-time staff person for each 25 to 150 centers it sponsors. It is the State agency's responsibility to determine the appropriate level of staffing for monitoring for each sponsoring organization, consistent with these specified ranges and factors that the State agency will use to determine the appropriate level of monitoring staff for each sponsor. The monitoring staff equivalent may include the employee's time spent on scheduling, travel time, review time, follow-up activity, report writing, and activities related to the annual updating of children's enrollment forms;

(iii) The procedures to be used by the organization to administer the Program in, and disburse payments to, the child care facilities under its sponsorship;

(iv) For sponsoring organizations of day care homes, a description of the system for making tier I day care home determinations, and a description of the system of notifying tier II day care homes of their options for reimbursement; and

(v) Any additional information necessary to document the sponsoring organization's compliance with the performance standards set forth at paragraph (b)(6) of this section.

(2) *Outside employment policy.* State agencies must collect from sponsoring organizations an outside employment

policy. The policy must restrict other employment by employees that interferes with an employee's performance of Program-related duties and responsibilities, including outside employment that constitutes a real or apparent conflict of interest. The policy will be effective unless disapproved by the State agency;

(3) *Bond.* Sponsoring organizations must submit a bond, if such bond is required by State law, regulation, or policy. If the State agency requires a bond for sponsoring organizations pursuant to State law, regulation, or policy, the State agency must submit a copy of that requirement and a list of sponsoring organizations posting a bond to the appropriate FNSRO on an annual basis;

(4) *Day care home enrollment information.* State agencies must collect from sponsoring organizations of day care homes current information on:

(i) The total number of children enrolled in all homes in the sponsorship;

(ii) An assurance that day care home providers' own children whose meals are claimed for reimbursement in the Program are eligible for free or reduced-price meals;

(iii) The total number of tier I and tier II day care homes that it sponsors;

(iv) The total number of children enrolled in tier I day care homes;

(v) The total number of children enrolled in tier II day care homes; and

(vi) The total number of children in tier II day care homes that have been identified as eligible for free or reduced-price meals;

(5) *Facility lists.* The State agency must collect from each sponsoring organization a list of all their applicant day care homes, child care centers, outside-school-hours-care centers, at-risk afterschool care centers, and adult day care centers;

(6) *Providing benefits to unserved facilities or participants.* (i) *Criteria.* The State agency must develop criteria for determining whether a new sponsoring organization's participation will help ensure the delivery of benefits to otherwise unserved facilities or participants, and must disseminate these criteria to new sponsoring organizations when they request information about applying to the Program; and

(ii) *Documentation.* The State agency must collect from the new sponsoring organization documentation that its participation will help ensure the delivery of benefits to otherwise unserved facilities or participants in accordance with the State agency's criteria;

(7) *Notice to parents.* The State agency must collect a copy of the sponsoring organization's notice to parents, in a form and, to the maximum extent practicable, language easily understandable by the participant's parents or guardians. The notice must inform them of their facility's participation in CACFP, the Program's benefits, the name and telephone number of the sponsoring organization, and the name and telephone number of the State agency responsible for administration of CACFP;

(8) *Serious deficiency procedures.* If the sponsoring organization chooses to establish procedures for determining a day care home seriously deficient that supplement the procedures in paragraph § 226.16(l), the State agency must collect a copy of those supplemental procedures in the application. If the State agency has made the sponsoring organization responsible for the administrative review of a proposed termination of a day care home's agreement for cause, pursuant to § 226.6(l)(1), the State agency must collect a copy of the sponsoring organization's administrative review procedures. The sponsoring organization's supplemental serious deficiency and administrative review procedures must comply with §§ 226.16(l) and 226.6(l);

(9) *Facility applications.* The State agency must ensure collection and review of the following information for every sponsored facility:

(i) An application for participation for each child care and adult day care facility accompanied by all necessary supporting documentation;

(ii) Timely information concerning the eligibility status of child care and adult day care facilities (such as licensing or approval actions);

(iii) For sponsoring organizations of day care homes, the full legal names and any other names previously used, mailing address, and date of birth of each provider;

(iv) Documentation that all day care homes and sponsored centers meet Program licensing or approval requirements; and

(v) The State agency must ensure that no facilities are participating under more than one sponsoring organization; and

(10) *Disclosure of potential conflicts of interest.* The State agency must require sponsoring organizations to disclose any less-than-arms-length transactions in the operation of CACFP that are anticipated in the upcoming year. The State agency approval of such transactions must be consistent with FNS Instruction 796-2 ("Financial

Management—Child and Adult Care Food Program”). Sponsoring organizations also must disclose to the State agency any other potential conflicts of interest, such as relationships among officers, board members, and employees.

(d) *Application requirements for independent and sponsored centers.* State agencies must obtain and review the following additional information from centers:

(1) *Participant eligibility information.* State agencies must collect current information on the number of enrolled participants eligible for free, reduced-price and paid meals;

(2) *Documentation of licensing/approval.* State agencies must collect documentation demonstrating that each center meets Program licensing or approval requirements;

(3) *Documentation of for-profit center eligibility.* State agencies must collect documentation that each for-profit center meets the definition set forth in § 226.2, *For-profit center*; and

(4) *At-risk afterschool care centers.* In addition to the general CACFP application requirements, State agencies must collect documentation from at-risk institutions demonstrating that each at-risk afterschool care center meets the program eligibility requirements in §§ 226.17a(a) and 226.17a(b), and sponsoring organizations must submit documentation that each sponsored at-risk afterschool care center meets the area eligibility requirements in § 226.17a(f).

**§ 226.6b State agency annual information submission requirements for renewing institutions.**

(a) *Annual information submission requirements for renewing institutions.* Each State agency must establish annual information submission procedures to confirm the continued eligibility of renewing institutions under this part. Renewing institutions must not be required to submit a free and reduced-price policy statement or a nondiscrimination statement unless substantive changes are made to either statement. In addition, the State agency's review procedures must ensure that institutions annually submit information or certify that certain information is still true based on the requirements of this section. For information that must be certified, any new changes made in the past year and not previously reported to the State agency must be updated in the renewal information submission. Any additional information submitted in the renewal must be certified by the institution to be true. This section contains the

information that must be submitted, certified or updated annually.

(b) *Eligibility certification for institutions.* The State agency must ensure that all renewing institutions certify the following:

(1) *Presence on National disqualified list.* The State agency must ensure that renewing institutions certify that neither the institution nor its principals are on the National disqualified list. The State agency must also ensure that renewing sponsoring organizations certify that no sponsored facility or facility principal is on the National disqualified list. The State agency must compare the institution's certification with the National disqualified list to ensure its accuracy at the time of renewal;

(2) *Ineligibility for other publicly funded programs.* The State agency must ensure that renewing institutions submit a list of the publicly funded programs in which the institution and its principals have participated in the past seven years that have not been previously reported to the State agency. Institutions must certify that the institution and the institution's principals have not been declared ineligible for any other publicly funded program by reason of violating that program's requirements in the past seven years. In lieu of certification, if not previously submitted, the institution may submit documentation that the institution or the principal previously declared ineligible has been fully reinstated in, or determined eligible for, that program and has repaid any debts owed. If the State agency has reason to believe that the renewing institution or any of its principals were determined ineligible to participate in another publicly funded program by reason of violating that program's requirements, the State agency must follow up with the entity administering the publicly funded program to gather sufficient evidence to determine whether the institution or its principals were, in fact, determined ineligible;

(3) *Information on criminal convictions.* The State agency must ensure that renewing institutions certify that the institution's principals have not been convicted of any activity that occurred during the past seven years and that indicates a lack of business integrity, as defined in § 226.6(c)(1)(ii)(A);

(4) *Submission of names and addresses.* The State agency must ensure that renewing institutions submit a certification that the full legal names and any other names previously used, mailing address, and date of birth of the institution's executive director and chairman of the board of directors or, in

the case of a for-profit center that does not have an executive director or is not required to have a board of directors, the owner of the for-profit center;

(5) *Compliance with performance standards.* The State agency must ensure that each renewing institution certifies that it is still in compliance with the performance standards described in § 226.6a(b)(6), meaning it is financially viable, is administratively capable of operating the Program, and has internal controls in effect to ensure accountability;

(6) *Licensing.* The State agency must ensure that each independent center certifies that its licensing or approval status is up-to-date and that it continues to meet the licensing requirements outlined in §§ 226.6(d) and (e). Sponsoring organizations must certify that the licensing/approval status of their facilities is up-to-date and that they continue to meet the licensing requirements outlined in §§ 226.6(d) and (e). If the independent center or facility has a new license not previously on file with the State agency, a copy must be submitted unless the State agency has other means of confirming the licensing or approval status of any independent center or facility providing care; and

(7) *At-risk information.* The State agency must ensure that independent at-risk afterschool care centers or sponsoring organizations of at-risk afterschool care centers certify that they still meet the requirements of § 226.17a(b). Sponsoring organizations of at-risk afterschool care centers must provide area eligibility data in compliance with the provisions of § 226.15(g). In accordance with § 226.6(f)(5)(ii), State agencies must determine the area eligibility of each independent at-risk afterschool care center that is already participating in the Program.

(c) *Administrative budget submission for sponsoring organizations.* The State agency must ensure that renewing sponsoring organizations submit an administrative budget for the upcoming year with sufficiently detailed information concerning projected CACFP administrative earnings and expenses, as well as other non-Program funds to be used in Program administration, for the State agency to determine the allowability, necessity, and reasonableness of all proposed expenditures, and to assess the sponsoring organization's capability to manage Program funds. The administrative budget must demonstrate that the sponsoring organization will expend and account for funds in accordance with regulatory

requirements, FNS Instruction 796–2, (“Financial Management—Child and Adult Care Food Program”), parts 3015, 3016, and 3019 of this title, and applicable Office of Management and Budget circulars. In addition, the administrative budget submitted by a sponsor 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 in accordance with § 226.7(g)(1). For sponsoring organizations of day care homes seeking to carry over administrative funds in accordance with § 226.12(a)(3), the budget must include an estimate of requested administrative fund carryover amounts and a description of the proposed purpose(s) for which those funds will be obligated or expended.

(d) *Eligibility certification for sponsoring organizations.* In addition to the certification requirements in paragraph (b) of this section, the State agency must ensure that renewing sponsoring organizations certify the following:

(1) *Management plan.* The State agency must ensure that renewing sponsoring organizations certify that the sponsor has reviewed its current management plan on file with the State agency and that it is complete and up-to-date. If the management plan has changed, the sponsor must submit updates that meet the requirements of § 226.6a(c)(1). The State agency must establish factors, consistent with § 226.6a(c)(1), that it will consider in determining whether a renewing sponsoring organization has sufficient staff to perform required monitoring responsibilities at all of its sponsored facilities. As part of the annual review of the renewing sponsoring organization’s management plan, the State agency must determine the appropriate level of staffing for the sponsoring organization, consistent with the staffing range of monitors set forth at § 226.6a(c)(1) and the factors the State agency has established.

(2) *Outside employment policy.* The State agency must ensure that renewing sponsoring organizations certify that the outside employment policy most recently submitted to the State agency remains current and in effect or the sponsor must submit an updated outside employment policy at the time of renewal. The policy must restrict other employment by employees that interferes with an employee’s performance of Program-related duties and responsibilities, including outside

employment that constitutes a real or apparent conflict of interest.

(3) *Facility lists.* The State agency must ensure that each sponsoring organization certifies that the list of all of their applicant day care homes, child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers on file with the State agency is current and up-to-date.

(4) *Facility training.* The State agency must ensure that renewing sponsoring organizations certify that all facilities under their sponsorships have adhered to the training requirements set forth in Program regulations.

(5) *Disclosure of potential conflicts of interest.* The State agency must ensure that sponsoring organizations certify that no unreported less-than-arms-length transactions or any other potential conflicts of interest have occurred in the last year and disclose any that are anticipated in the upcoming year. The State agency approval of anticipated less-than-arms-length transactions must be consistent with FNS Instruction 796–2 (“Financial Management—Child and Adult Care Food Program”).

6. In § 226.7 by revising paragraph (g) and adding a sentence at the end of paragraph (j) to read as follows:

**§ 226.7 State agency responsibilities for financial management.**

\* \* \* \* \*

(g) *Budget approval.* The State agency must review institution budgets as described in §§ 226.6a(b)(1) and 226.6b(c) and must limit allowable administrative claims by each sponsoring organization to the administrative costs approved in its budget, except as provided in this section. The budget must demonstrate the institution’s ability to manage Program funds in accordance with this part, FNS Instruction 796–2 (“Financial Management—Child and Adult Care Food Program”), parts 3015, 3016, and 3019 of this title, and applicable Office of Management and Budget circulars. Sponsoring organizations must submit an administrative budget to the State agency annually, and independent centers must submit budgets as frequently as required by the State agency. Budget levels may be adjusted to reflect changes in Program activities. If the institution does not intend to use non-CACFP funds to support any required CACFP functions, the institution’s budget must identify a source of non-Program funds that could be used to pay overclaims or other unallowable costs. If the institution intends to use any non-Program

resources to meet CACFP requirements, these non-Program funds should be accounted for in the institution’s budget, and the institution’s budget must identify a source of non-Program funds that could be used to pay overclaims or other unallowable costs.

(1) For sponsoring organizations of centers, the State agency is prohibited from approving the sponsoring organization’s administrative budget, or any amendments to the budget, if the administrative budget shows the Program will be charged for administrative costs in excess of 15 percent of the meal reimbursements estimated to be earned during the budget year. However, the State agency may waive this limit if the sponsoring organization provides justification that it requires Program funds in excess of 15 percent to pay its administrative costs and if the State agency is convinced that the institution will have adequate funding to provide meals meeting the requirements of § 226.20. The State agency must document all waiver approvals and denials in writing, and must provide a copy of all such letters to the appropriate FNSRO.

(2) For sponsoring organizations of day care homes seeking to carry over administrative funds in accordance with § 226.12(a)(3), the State agency must require the budget to include an estimate of the requested administrative fund carryover amount and a description of the proposed purpose(s) for which those funds will 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 consider whether the sponsoring organization has a financial management system that meets Program requirements and is capable of controlling the custody, documentation and disbursement of carryover funds. As soon as possible after fiscal year close-out, the State agency must require sponsoring organizations carrying over administrative funds to submit an amended budget for State agency review and approval. The amended budget must identify the amount of administrative funds actually carried over and describe the purpose(s) for which the carryover funds have been or will be used.

\* \* \* \* \*

(j) \* \* \* In addition, each State agency must establish procedures to recover administrative funds from sponsoring organizations of day care homes which are not properly payable under FNS Instruction 796–2 (“Financial Management—Child and

Adult Care Food Program”), 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 received.

7. In § 226.9, redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively; and add new paragraph (c) to read as follows:

§ 226.9 Assignment of rates of reimbursement for centers.

(c) If the State agency is allowing the use of claiming percentages or a blended per-meal rate of reimbursement as described in paragraph (b) of this section, the State agency must require centers to submit current eligibility information on enrolled participants, in order to calculate a blended rate or claiming percentage.

§ 226.10 [Amended]

8. In § 226.10, amend paragraph (a) by removing the citation “§ 226.6(f)(3)(iv)(F)” in the first sentence and adding the citation “§ 226.6(f)(7)(vi)” in its place.

9. In § 226.12, revise paragraph (a) to read as follows:

§ 226.12 Administrative payments to sponsoring organizations for day care homes.

(a) General. Sponsoring organizations of day care homes receive payments for administrative costs, subject to the following conditions:

(1) Sponsoring organizations shall receive reimbursement for the administrative costs of the sponsoring organization in an amount that is not less than the product obtained each month by multiplying:

(i) The number of day care homes of the sponsoring organization submitting a claim for reimbursement during the month, by

(ii) The appropriate administrative rate(s) announced annually in the Federal Register.

(2) FNS determines these administrative reimbursement rates by annually adjusting the following base administrative rates as set forth in § 226.4(i):

- (i) Initial 50 day care homes, 42 dollars;
(ii) Next 150 day care homes, 32 dollars;
(iii) Next 800 day care homes, 25 dollars;
(iv) Additional day care homes, 22 dollars.

(3) With State agency approval, a sponsoring organization may carry over

a maximum of 10 percent of administrative funds received under paragraph (a)(1) of this section for use in the following fiscal year. If such funds are not obligated or expended in the following fiscal year, they must be returned to the State agency in accordance with § 226.7(j).

(4) State agencies must recover any administrative funds not properly payable in accordance with FNS Instruction 796-2 (“Financial Management—Child and Adult Care Food Program”).

- 10. In § 226.15:
a. Revise paragraphs (b) and (e)(1); and
b. Amend paragraph (g) by removing “§ 226.6(f)(1)(ix)” in the last sentence and adding “§ 226.6(f)(5)” in its place.

The revisions read as follows:

§ 226.15 Institution provisions.

(b) New applications and renewals. Each new institution must submit to the State agency with its application all information required for its approval as set forth in § 226.6a. Such information must demonstrate that a new institution has the administrative and financial capability to operate the Program in accordance with this part and with the performance standards set forth in § 226.6a(b)(6). Renewing institutions must certify that they are capable of operating the Program in accordance with this part and as set forth in § 226.6b(b).

(1) Copies of the initial application, renewal information submissions, and supporting documents submitted to the State agency;

- 11. In § 226.16:
a. Revise paragraph (b);
b. Amend paragraph (d) introductory text by removing the words “paragraph (b)(1) of this section” in the second sentence and adding “§ 226.6a(c)(1)” in its place;
c. Amend paragraph (d)(4)(iii)(C) by removing the word “and” from the end of paragraph;
d. Amend paragraph (d)(4)(iii)(D) by removing the period from the end of the paragraph and adding a semicolon in its place;
e. Add new paragraphs (d)(4)(iii)(E) and (F);
f. Amend paragraph (f) by revising the citation “§ 226.6(b)(4)(ii)(A)” to read “§ 226.6(b)(4)(ii)”;
g. Revise paragraph (h); and
h. Revise paragraph (l)(2)(vii).

The additions and revisions read as follows:

§ 226.16 Sponsoring organization provisions.

(b) Each new sponsoring organization must submit to the State agency with its application all information required for its approval, and the approval of the facilities under its jurisdiction, as set forth in § 226.6a. The application must demonstrate that the institution has the administrative and financial capability to operate the Program in accordance with the Program regulations. Renewing sponsoring organizations must submit information in accordance with § 226.6b.

- (d) \* \* \*
(4) \* \* \*
(iii) \* \* \*
(E) The timing of unannounced reviews must be varied so that they are unpredictable to the facility; and
(F) All types of meal service must be subject to review and sponsoring organizations must vary the meal service reviewed.

(h) Sponsoring organizations of child care centers, adult day care centers, emergency shelters, at-risk afterschool care centers, or outside-school-hours care centers shall:

(1) Enter into a permanent agreement with unaffiliated sponsored centers and sponsored day care homes that at a minimum addresses the requirements set forth in the provisions of §§ 226.17, 226.17a, 226.18, 226.19, and 226.19a, as applicable. Nothing in the preceding sentence shall be construed to limit the ability of the sponsoring organization to suspend or terminate the permanent agreement in accordance with this part; and

(2) Make payments of program funds within five working days of receipt from the State agency, on the basis of the management plan approved by the State agency, and may not exceed the Program costs documented at each facility during any fiscal year; except in those States where the State agency has chosen the option to implement a meals times rates payment system. In those States which implement this optional method of reimbursement, such disbursements may not exceed the rates times the number of meals documented at each facility during any fiscal year.

- (1) \* \* \*
(2) \* \* \*
(vii) A determination that the day care home has been convicted of any activity

that occurred during the past seven years and that indicated a lack of business integrity, as defined in § 226.6(c)(1)(ii)(A).

\* \* \* \* \*

12. Section 226.17 is revised to read as follows:

**§ 226.17 Child care center provisions.**

(a) Child care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; provided, however, public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Child care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All child care centers, independent or sponsored, shall meet the following requirements:

(1) Child care centers must have Federal, State, or local licensing or approval to provide day care services to children. Child care centers, which are complying with applicable procedures to renew licensing or approval, may participate in the Program during the renewal process, unless the State agency has information that indicates that renewal will be denied. If licensing or approval is not available, a child care center may participate if it demonstrates compliance with CACFP child care standards or any applicable State or local child care standards to the State agency. At-risk afterschool care centers shall comply with licensing requirements set forth in § 226.17a(d).

(2) Except for for-profit centers, child care centers shall be public, or have tax exempt status under the Internal Revenue Code of 1986.

(3) Each child care center participating in the Program must serve one or more of the following meal types—breakfast; lunch; supper; and snack. Reimbursement must not be claimed for more than two meals and one snack or one meal and two snacks provided daily to each child. At-risk afterschool care centers shall comply with limits on daily reimbursement set forth in § 226.17a(h).

(4) Each child care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. For-profit child care centers may not claim reimbursement for meals served to children in any month in which less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free

or reduced-price meals or were title XX beneficiaries. However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be included in this percentage. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(5) A child care center with preschool children may also be approved to serve a breakfast, snack, and supper to school-age children participating in an outside-school-hours care program meeting the criteria of § 226.19(b) that is distinct from its day care program for preschool-age children. The State agency may authorize the service of lunch to such participating children who attend a school that does not offer a lunch program, provided that the limit of two meals and one snack, or one meal and two snacks, per child per day is not exceeded.

(6) A child care center with preschool children may also be approved to serve a snack or meal to school-age children participating in an at-risk afterschool care program meeting the requirements of § 226.17a that is distinct from its day care program for preschool children, provided that the limit of two meals, and one snack, or one meal and two snacks, per child per day is not exceeded.

(7) A child care center may utilize existing school food service facilities or obtain meals from a school food service facility, and the pertinent requirements of this part must be addressed in a written agreement between the child care center and school. The center shall maintain responsibility for all Program requirements set forth in this part.

(8) Each child care center, except at-risk afterschool care centers, shall collect and maintain documentation of the enrollment of each child, including information used to determine eligibility for free and reduced-price meals in accordance with § 226.23(e)(1). In addition, Head Start participants need only have a Head Start statement of income eligibility, or a statement of Head Start enrollment from an authorized Head Start representative, to be eligible for free meal benefits under CACFP. Such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(9) Each child care center, except at-risk afterschool care centers, must maintain daily records of time of service meal counts by type (breakfast, lunch, supper, and snacks) served to enrolled children, and to adults performing labor

necessary to the food service. At-risk afterschool care centers must maintain records as required by § 226.17a(k).

(10) Each child care center must require key staff, as defined by the State agency, to attend Program training prior to the center's participation in the Program, and at least annually thereafter, on content areas established by the State agency.

(11) Each child care center must permit the Department, the State agency, and the sponsoring organization, if applicable, to visit the child care center and review its meal service and records during its hours of child care operations.

(12) Sponsored child care centers must promptly inform the sponsoring organization about any change in its licensing or approval status.

(13) Unaffiliated sponsored child care centers have the right to receive in a timely manner reimbursement for meals served to eligible children for which the sponsoring organization has received payment from the State agency. However, if, with the child care center's consent, the sponsoring organization will incur costs for the provision of program foodstuffs or meals on behalf of the center, and subtract such costs from Program payments to the center, the particulars of this arrangement shall be specified in the agreement. The sponsoring organization must not withhold Program payments to any child care center for any other reason, except that the sponsoring organization may withhold from the child care center any amounts that the sponsoring organization has reason to believe are invalid, due to the child care center having submitted a false or erroneous meal count.

(14) The State agency and an independent child care center have the right to terminate the agreement for cause or, subject to § 226.6(c), convenience. Sponsoring organizations and unaffiliated sponsored centers have the right to terminate the agreement for cause or convenience.

(15) If the State agency has approved a time limit for submission of meal records by child care centers, child care centers must be in compliance.

(16) If so instructed by its sponsoring organization, sponsored child care centers must distribute a copy of the sponsoring organization's notice to parents.

(c) Unaffiliated sponsored child care centers shall enter into a written permanent agreement with the sponsoring organization which specifies the rights and responsibilities of both parties. At a minimum, the agreement

shall embody the provisions set forth in paragraph (b) of this section.

(d) Independent child care centers shall enter into a written permanent agreement with the State agency which specifies the rights and responsibilities of both parties as required by § 226.6(b)(4). At a minimum, the agreement shall embody the applicable provisions set forth in paragraph (b) of this section.

(e) Each child care center shall comply with the recordkeeping requirements established in § 226.10(d), paragraph (b) of this section and, if applicable, § 226.15(e). Failure to maintain such records shall be grounds for the denial of reimbursement.

(f) Nothing in this section shall be construed to limit the ability to terminate the permanent agreement with an independent or unaffiliated sponsored center in accordance with this part.

13. In § 226.17a:

a. Revise paragraph (a)(1) introductory text;

b. Remove paragraphs (a)(1)(v), (e), (f), (g), and (l), redesignate paragraphs (h) through (k) as paragraphs (e) through (h), respectively, and redesignate paragraphs (m) through (q) as paragraphs (i) through (m) respectively;

c. Amend paragraph (b)(1)(iv) by removing the words “paragraph (i)” and adding “paragraph (f)” in their place;

d. Amend newly redesignated paragraph (f)(3) by removing the words “, except in cases where the State agency has determined it is most efficient to incorporate area eligibility decisions into the three-year application cycle” from the third sentence; and

e. Add new paragraph (n).

The addition and revision read as follows:

**§ 226.17a At-risk afterschool care center provisions.**

(a) \* \* \*

(1) *Eligible organizations.* To receive reimbursement for at-risk afterschool snacks and at-risk afterschool meals, organizations must meet the criteria below.

(n) *Permanent agreements.* Unaffiliated sponsored at-risk afterschool care centers shall enter into a written permanent agreement with the sponsoring organization which specifies the rights and responsibilities of both parties. At a minimum, the agreement shall embody the provisions set forth in § 226.17(b).

14. In § 226.18, revise paragraph (b)(12) as follows:

**§ 226.18 Day care home provisions.**

(b) \* \* \*

(12) The responsibility of the sponsoring organization, upon the request of a tier II day care home, to collect applications and determine the eligibility of enrolled children for free or reduced-price meals and the ability 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 and 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);

\* \* \* \* \*

15. In § 226.19, add paragraph (d) as follows:

**§ 226.19 Outside-school-hours care center provisions.**

\* \* \* \* \*

(d) Unaffiliated sponsored outside-school-hours-care centers shall enter into a written permanent agreement with the sponsoring organization which specifies the rights and responsibilities of both parties. At a minimum, the agreement must address the provisions set forth in § 226.17(b).

16. In § 226.19a, add paragraph (d) as follows:

**§ 226.19a Adult day care center provisions.**

\* \* \* \* \*

(d) Unaffiliated sponsored adult day care centers shall enter into a written permanent agreement with the sponsoring organization which specifies the rights and responsibilities of both parties. At a minimum, the agreement must address the provisions set forth in § 226.17(b).

17. In § 226.23,

a. Amend paragraph (e)(2)(vi), by removing the word “and” from the end of the paragraph;

b. Amend paragraph (e)(2)(vii)(B), by removing the period and adding “; and” in its place; and

c. Add paragraph (e)(2)(viii).

The addition reads as follows:

**§ 226.23 Free and reduced-price meals.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(viii) If a tier II day care home elects to assist in collecting and transmitting the applications to the sponsoring organization, it is the responsibility of the sponsoring organization to establish procedures to ensure the provider does not review or alter the application. The

household consent form must explain that:

(A) The household is not required to complete the income eligibility form in order for their children to participate in CACFP;

(B) The household may return the application to either the sponsoring organization or the day care home provider;

(C) By signing the letter and giving it 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.

\* \* \* \* \*

Dated: April 2, 2012.

**Robin D. Bailey, Jr.,**

*Acting Administrator, Food and Nutrition Service.*

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**DEPARTMENT OF ENERGY**

**10 CFR Parts 429 and 430**

**[Docket No. EERE-2011-BT-TP-0071]**

**RIN 1904-AC67**

**Energy Conservation Program: Test Procedures for Light-Emitting Diode Lamps**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Department of Energy (DOE) proposes to establish test procedures for light-emitting diode (LED) lamps to support implementation of labeling provisions by the Federal Trade Commission (FTC) established under the Energy Policy and Conservation Act (EPCA). The proposed test procedures define methods for measuring the lumen output, input power, and relative spectral distribution (to determine correlated color temperature, or CCT) of LED lamps. Further, the proposed test procedures define methods for measuring the lumen maintenance of the LED source (the component of the LED lamp that produces light) to project the rated lifetime of LED lamps. The rated lifetime of the LED lamp is the time required for the LED source component of the lamp to reach lumen maintenance of 70 percent (that is, 70 percent of initial light output). After reviewing