



Summary of the [Child Nutrition Program Integrity Final Rule](#)

Published August 23, 2023

This notice of final rulemaking codifies three separate proposed rules, not just the child nutrition program integrity rule. Notably, the USDA delayed rules on extending the Child and Adult Care Food Program's (CACFP) serious deficiency and termination processes to the Summer Food Service Program (SFSP).

For more, see the USDA [memo](#) and [summary of changes by program](#).

Contents:

[Part I: Child Nutrition Program Integrity](#)

[Part II: CACFP Amendments](#)

[Part III: Simplifying Monitoring in NSLP and SBP](#)

[Part IV: Miscellaneous Provisions](#)

Part I: Child Nutrition Program Integrity

Relates to a proposed rule published March 16, 2016. Many proposals were made in specific response to the Healthy, Hunger-Free Kids Act of 2010 while others were more generally intended to strengthen oversight and administration of the child nutrition programs.

1. Fines for state agencies and school food authorities

Compliance date: August 23, 2024

- Institutes fines for state agencies and school food authorities (SFAs) operating any child nutrition program (including CACFP and SFSP) for:
 - Failure to correct severe program mismanagement;
 - Disregard of a program requirement of which an SFA or State agency has been informed; or
 - Failure to correct repeated violations of program requirements.
- Emphasizes that fines are to be used in exceptional circumstances of severe or repeated violations after an opportunity to correct issues has been given, not routinely used or used for issues like meal pattern violations or recordkeeping errors, nor against state agencies because of local program violations, and notes that FNS and state agencies will, in consultation with legal counsel, carefully consider whether a fine is the appropriate response to each situation.

- Allows state agencies to suspend or terminate an SFA if a fine is not paid.
- Provides the ability to appeal a fine through existing appeal processes.
- Prohibits fines from being paid from federal funds.
- Notes that fines are transmitted by FNS to the US Treasury and not retained by FNS.
- Does **not** institute fines for non-SFA sponsors and institutions in the CACFP and SFSP as included in the proposed rule.
 - FNS is pursuing separate rulemaking to strengthen the serious deficiency process.
- Specifies that maximum fines for SFAs will be calculated based on percentages of meal reimbursements earned for the most recent fiscal year for which full year data is available.
 - The maximum for a first fine is one percent of reimbursements, second fine five percent, and the third and all subsequent fines 10 percent.
 - The state agency may assess a fine below the maximum, for example targeting only reimbursements earned during a particular timeframe or at certain sites.
- Specifies that maximum fines for state agencies will be calculated based on all state administrative expense (SAE) allocations made available to the state in the most recent fiscal year for which full year data is available.
- Requires state agencies to provide 30 days of notice before assessing a fine.
- Delegates authority to set a due date for SFAs paying a fine to state agencies.
- Strongly encourages state agencies to consult with legal counsel before assessing a fine but does not require notification of or approval by FNS.

2. Reciprocal Disqualification Across Child Nutrition Programs

- Background: “disqualification” is a term or process currently only used in the CACFP to bar an individual or entity from participating in the CACFP if terminated from the program for cause. The proposed rule sought to extend disqualification to SFSP and institute “reciprocal disqualification” across all child nutrition programs – meaning that an SFA terminated and disqualified from the CACFP over serious deficiencies would also be disqualified from participation in NSLP, SBP and other child nutrition programs.
- Does **not** codify any part of this in the final rule.
- Indicates that FNS intends to improve the National Disqualified List currently in use in the CACFP and then pursue additional rulemaking to propose improvements to the serious deficiency and disqualification process.

3. Serious Deficiency Process and Disqualification in the SFSP and for Unaffiliated Centers in the CACFP

- Does **not** codify the proposed rule to extend the CACFP's current serious deficiency and disqualification process to SFSP.
- Indicates that FNS intends to pursue additional rulemaking to propose improvements to the serious deficiency and disqualification process, and as part of that, extend the improved process to the SFSP and unaffiliated CACFP centers.
- Provides state agencies with continued discretion to apply their own processes for addressing serious deficiencies in unaffiliated CACFP centers and SFSP sponsors without FNS approval.
- Defines "termination for convenience" and addresses the cessation of program activities in the CACFP and SFSP for reasons unrelated to performance or compliance.

4. State Agency Review Requirements in the CACFP

Compliance date: August 23, 2024

- Requires state agencies to review institutions at least once every two years if they:
 - Sponsor more than 100 facilities, as currently required;
 - Engage in any activities other than those related to CACFP;
 - Have received findings from a recent review that detected serious management problems; or
 - Are at risk of having serious management problems (i.e. affect their ability to meet the performance standards of financial viability, administrative capability, and accountability).
- Encourages state agencies to make wider use of SAE and CACFP audit funds to meet the higher review requirements.
- Directs state agencies to prioritize reviews to ensure that institutions do not divert CACFP resources to other activities or devote too little resources to ensure adequate management of CACFP responsibilities.
- Permits state agencies to work with FNS on an alternative proposal for prioritizing reviews within statutory requirements.

5. State Liability for Payments to CACFP Institutions Awaiting Hearing Results

Compliance date: August 23, 2024

- Requires states to pay valid claims for reimbursements to a CACFP institution if the 60-day deadline for a fair hearing and decision is not met.
- Allows FNS to grant case-by-case exceptions due to mitigating circumstances.

6. CACFP Audit Funding

Compliance date: September 22, 2023

- Allows FNS to increase the amount of funds available to support state agency review, monitoring and integrity-related activities from 1.5% of program funds utilized in the second preceding year to 2% as long as the state demonstrates the need for and effective use of the increased resources.
- Lays out an equitable process for agencies to submit a written request justifying the need for the increase in audit funds.

7. Financial Review of CACFP Sponsoring Organizations

Compliance date: August 23, 2024

- Requires state agencies to annually verify one month of bank account activity and actual expenditures by CACFP sponsoring organizations.
- Requires state agencies to annually review CACFP expenditures reported by sponsors of unaffiliated centers.
- Requires sponsors of unaffiliated centers to annually report the amount of program expenditures and the amount of meal reimbursement funds retained to cover administrative costs.

8. Informal Purchase Methods for CACFP

Compliance date: August 23, 2024

- Updates procurement standards and makes the value of the Federal micro-purchase threshold and Federal simplified acquisition threshold consistent with guidance on informal purchase methods described in 7 CFR 200, which would avoid the need to update CACFP regulations directly with increases to the thresholds as they increase with inflation.
- Streamlines portions of the CACFP regulations on procurement to reference 7 CFR 200.

9. School Food Authority Contracts with Food Service Management Companies

Compliance date: August 23, 2024

- Does not, as proposed, eliminate the option for SFAs to enter into cost reimbursable contracts with FSMCs, thus retaining the option for either fixed price (per meal or per time period) contracts or cost reimbursable contracts.
- Requires state agencies to annually review and approve each contract and contract amendment between a SFA and FSMC.
- Amends both NSLP and SBP regulations to require FSMCs to credit the value of USDA Foods only to the benefit of the respective SFA's non-profit food service account.

10. Annual NSLP Procurement Training

Compliance date: August 23, 2024

- Requires state directors of school nutrition programs, state directors of distributing agencies, and school nutrition program directors, managers, or other staff who work on NSLP procurement activities to complete procurement training annually.
- Streamlines these requirements with school nutrition professional standards requirements, monitoring, and record keeping.
- Does not establish a specific number of training hours given the range of training needs year to year.

Part II: CACFP Amendments

Relates to statutory amendments proposed in the Child and Adult Care Food Program: Amendments Related to the Healthy, Hunger-Free Kids Act of 2010, 77 FR 21018, on April 9, 2012. These provisions have largely already been implemented via guidance memos.

Compliance date: September 22, 2023

1. Requires institutions to submit an initial application to the State agency and, in subsequent years, periodically update the information, in lieu of submitting a new application every 1-3 years as was previously required.
2. Requires sponsoring organizations to vary the timing of reviews of sponsored facilities so that visits are not predictable to the facility staff and the types of meal services reviewed are varied and defines “facility” and “sponsored center.”
3. Requires State agencies to develop and provide for the use of a standard permanent agreement between sponsoring organizations and day care centers.
4. Allows tier II day care homes to collect household income information and transmit it to the sponsoring organization rather than require families to submit forms directly to the sponsor.
5. Modifies the method of calculating administrative payments to sponsoring organizations of day care homes to be simply the amount established by formula rather than the lesser of the calculated amount, budgeted costs and actual expenditures.
6. Allows sponsoring organizations of day care homes to carry over up to 10 percent of their administrative funding from the previous Federal fiscal year into the next fiscal year.

Part III: Simplifying Monitoring in NSLP and SBP

Relates to the proposed rule Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs, issued on January 23, 2020.

1. Allows state agencies to return to a five-year cycle for conducting administrative reviews of school food authorities and also conduct food service management company reviews on a

five-year cycle but requires state agencies to identify high-risk SFAs for additional oversight.
Compliance date July 1, 2024

2. Gives State agencies flexibility to substitute information from local-level audits for related parts of the administrative review if approved by FNS.

Compliance date July 1, 2024

3. Allows State agencies to omit specific elements of the administrative review, when equivalent oversight activities are conducted outside of the administrative review process.

Compliance date July 1, 2024

4. Adopts a framework that State agencies may elect to modify or omit certain administrative review elements if the State agency or SFA adopts the specified error-reduction or integrity-focused improvements.

Compliance date September 22, 2023

5. Gives State agencies flexibility to conduct the assessment of an SFA's nonprofit school food service account at any point in the review process rather than require it to occur off-site.

Compliance date September 22, 2023

6. Includes compliance with the Buy American requirement as part of the general areas of the administrative review and requires state agencies to ensure compliance with encouragement for coordination and communication with the procurement review team.

Compliance date September 22, 2023

7. Removes the requirement for fiscal action against SFAs for repeated violations of milk type and vegetable subgroup meal pattern requirements.

Compliance date September 22, 2023

8. Reduces the performance-based reimbursement reporting requirement from quarterly to annually.

Compliance date September 22, 2023

Part IV: Miscellaneous Provisions

1. **State Administrative Expense (SAE) Funds**

Compliance date September 22, 2023

Changes the requirement for state agencies to return any unexpended SAE funds at the end of the fiscal year following the fiscal year for which the funds were awarded to only requiring the return of *unobligated* funds.

2. **Application Requirements**

Compliance date September 22, 2023

Requires both CACFP and SFSP institution applications to include a certification statement that the application is true and correct along with the name, mailing address, and date of birth of the institution's executive director and board of directors chair or, in the case of a for-profit center, the owner of the for-profit center plus the Federal Employer Identification Number (FEIN) or Unique Entity Identifier (UEI).