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monitoring, and reporting and record-keeping requirements.

[53 FR 29147, Aug. 2, 1988, as amended at 78 FR 39090, June 28, 2013]

§210.2 Definitions.

For the purpose of this part:

2 CFR part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

Act means the National School Lunch Act, as amended.

Afterschool care program means a program providing organized child care services to enrolled school-age children afterschool hours for the purpose of care and supervision of children. Those programs shall be distinct from any extracurricular programs organized primarily for scholastic, cultural or athletic purposes.

Applicable credits shall have the meaning established in 2 CFR part 200 and USDA implementing regulations 2 CFR part 400 and part 415.

Attendance factor means a percentage developed no less than once each school year which accounts for the difference between enrollment and attendance. The attendance factor may be developed by the school food authority, subject to State agency approval, or may be developed by the State agency. In the absence of a local or State attendance factor, the school food authority shall use an attendance factor developed by FNS. When taking the attendance factor into consideration, school food authorities shall assume that all children eligible for free and reduced price lunches attend school at the same rate as the general school population.

Average Daily Participation means the average number of children, by eligibility category, participating in the Program each operating day. These numbers are obtained by dividing (a) the total number of free lunches

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claimed during a reporting period by the number of operating days in the same period; (b) the total number of reduced price lunches claimed during a reporting period by the number of operating days in the same period; and (c) the total number of paid lunches claimed during a reporting period by the number of operating days in the same period.

Child means—(a) a student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (a) and (b) of the definition of “School,” including students who are mentally or physically disabled as defined by the State and who are participating in a school program established for the mentally or physically disabled; or (b) a person under 21 chronological years of age who is enrolled in an institution or center as described in paragraph (c) of the definition of “School;” or (c) For purposes of reimbursement for meal supplements served in afterschool care programs, an individual enrolled in an afterschool care program operated by an eligible school who is 12 years of age or under, or in the case of children of migrant workers and children with disabilities, not more than 15 years of age.

CND means the Child Nutrition Division of the Food and Nutrition Service of the Department.

Commodity School Program means the Program under which participating schools operate a nonprofit lunch program in accordance with this part and receive donated food assistance in lieu of general cash assistance. Schools participating in the Commodity School Program shall also receive special cash and donated food assistance in accordance with §210.4(c).

Contractor means a commercial enterprise, public or nonprofit private organization or individual that enters into a contract with a school food authority.

Cost reimbursable contract means a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed fee.

Days means calendar days unless otherwise specified.

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Department means the United States Department of Agriculture.

Distributing agency means a State agency which enters into an agreement with the Department for the distribution to schools of donated foods pursuant to part 250 of this chapter.

Donated foods means food commodities donated by the Department for use in nonprofit lunch programs.

Fiscal year means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

Fixed fee means an agreed upon amount that is fixed at the inception of the contract. In a cost reimbursable contract, the fixed fee includes the contractor's direct and indirect administrative costs and profit allocable to the contract.

FNS means the Food and Nutrition Service, United States Department of Agriculture.

FNSRO means the appropriate Regional Office of the Food and Nutrition Service of the Department.

Food component means one of the food groups which comprise reimbursable meals. The food components are: Meats/meat alternates, grains, vegetables, fruits, and fluid milk. Meals offered to preschoolers must consist of: Meats/meat alternates, grains, vegetables/fruits, and fluid milk.

Food item means a specific food offered within a food component.

Food service management company means a commercial enterprise or a nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service.

Free lunch means a lunch served under the Program to a child from a household eligible for such benefits under 7 CFR part 245 and for which neither the child nor any member of the household pays or is required to work.

Local educational agency means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State,

or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

Lunch means a meal service that meets the meal requirements in §210.10 for lunches.

National School Lunch Program means the Program under which participating schools operate a nonprofit lunch program in accordance with this part. General and special cash assistance and donated food assistance are made available to schools in accordance with this part.

Net cash resources means all monies, as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

Nonprofit means, when applied to schools or institutions eligible for the Program, exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

Nonprofit school food service means all food service operations conducted by the school food authority principally for the benefit of schoolchildren, all of the revenue from which is used solely for the operation or improvement of such food services.

Nonprofit school food service account means the restricted account in which all of the revenue from all food service operations conducted by the school

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food authority principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service. This account shall include, as appropriate, non-Federal funds used to support paid lunches as provided in §210.14(e), and proceeds from nonprogram foods as provided in §210.14(f).

OIG means the Office of the Inspector General of the Department.

Paid lunch means a lunch served to children who are either not certified for or elect not to receive the free or reduced price benefits offered under part 245 of this chapter. The Department subsidizes each paid lunch with both general cash assistance and donated foods. The prices for paid lunches in a school food authority shall be determined in accordance with §210.14(e).

Point of Service means that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced price or paid lunch has been served to an eligible child.

Program means the National School Lunch Program and the Commodity School Program.

Reduced price lunch means a lunch served under the Program: (a) to a child from a household eligible for such benefits under 7 CFR part 245; (b) for which the price is less than the school food authority designated full price of the lunch and which does not exceed the maximum allowable reduced price specified under 7 CFR part 245; and (c) for which neither the child nor any member of the household is required to work.

Reimbursement means Federal cash assistance including advances paid or payable to participating schools for lunches meeting the requirements of §210.10 and served to eligible children.

Revenue, when applied to nonprofit school food service, means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

School means: (a) An educational unit of high school grade or under, recog-

nized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (b) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; or (c) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term "residential child care institutions" includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more.

School food authority means the governing body which is responsible for the administration of one or more schools; and has the legal authority to operate the Program therein *or* be otherwise approved by FNS to operate the Program.

School nutrition program directors are those individuals directly responsible for the management of the day-to-day operations of school food service for all participating schools under the jurisdiction of the school food authority.

School nutrition program managers are those individuals directly responsible for the management of the day-to-day operations of school food service for a participating school(s).

School nutrition program staff are those individuals, without managerial responsibilities, involved in day-to-day operations of school food service for a participating school(s).

School week means the period of time used to determine compliance with the meal requirements in §210.10. The period shall be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period shall be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school lunches are offered less than three times shall be combined with either the previous or the coming week.

School year means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

Secretary means the Secretary of Agriculture.

State means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and, as applicable, American Samoa and the Commonwealth of the Northern Marianas.

State agency means (a) the State educational agency; (b) any other agency of the State which has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools, as specified in §210.3(b); or (c) the FNSRO, where the FNSRO administers the Program as specified in §210.3(c).

State educational agency means, as the State legislature may determine, (a) the chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (b) a board of education controlling the State department of education.

Student with disabilities means any child who has a physical or mental impairment as defined in §15b.3 of the Department's nondiscrimination regulations (7 CFR part 15b).

Tofu means a soybean-derived food, made by a process in which soybeans are soaked, ground, mixed with water, heated, filtered, coagulated, and formed into cakes. Basic ingredients are whole soybeans, one or more food-grade coagulants (typically a salt or an acid), and water. Tofu products must conform to FNS guidance to count to-

ward the meats/meat alternates component.

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

Whole grains means grains that consist of the intact, ground, cracked, or flaked grain seed whose principal anatomical components—the starchy endosperm, germ and bran—are present in the same relative proportions as they exist in the intact grain seed. Whole grain-rich products must conform to FNS guidance to count toward the grains component.

Yogurt means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, and 21 CFR 131.206, respectively.

[53 FR 29147, Aug. 2, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §210.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§210.3 Administration.

(a) *FNS*. FNS will act on behalf of the Department in the administration of the Program. Within FNS, the CND will be responsible for Program administration.

(b) *States*. Within the States, the responsibility for the administration of the Program in schools, as defined in §210.2, shall be in the State educational agency. If the State educational agency is unable to administer the Program in public or private nonprofit residential child care institutions or nonprofit

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(6) Children who qualify for free lunches under guidelines established by the Secretary shall, at the option of the school involved (or of the local educational agency involved in the case of a public school) be eligible for free milk upon their request.

(7) For the fiscal year ending June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions shall not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor.

(8) Such adjustment shall be computed to the nearest one-fourth cent.

(9) Notwithstanding any other provision of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children.

[52 FR 7562, Mar. 12, 1987]

§ 215.2 Definitions.

For the purpose of this part, the term:

2 CFR part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

Act means the Child Nutrition Act of 1966.

Adults means those persons not included under the definition of children.

Applicable credits shall have the meaning established in 2 CFR part 200 and USDA implementing regulations 2 CFR part 400 and part 415.

Child and Adult Care Food Program means the program authorized by section 17 of the National School Lunch Act, as amended.

Child care institution means any non-profit nursery school, child care center, settlement house, summer camp, service institution participating in the Summer Food Program for Children pursuant to part 225 of this chapter, in-

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stitution participating in the Child and Adult Care Food Program pursuant to part 226 of this chapter, or similar non-profit institution devoted to the care and training of children. The term "child care institution" also includes a nonprofit agency to which such institution has delegated authority for the operation of a milk program in the institution. It does not include any institution falling within the definition of "School" of this section.

Child means

(1) A person under 19 chronological years of age in a Child care institution as defined in this section;

(2) A person under 21 chronological years of age attending a school as defined in paragraphs (3) and (4) of the definition of *School* in this section;

(3) A student of high school grade or under attending school as defined in paragraphs (1) and (2) of the definition of *School* in this section; or

(4) A student who is mentally or physically disabled as determined by the State and who is participating in a school program established for the mentally or physically disabled, of high school grade or under as determined by the State educational agency in paragraphs (1) and (2) of the definition of *School* in this section.

CND means the Child Nutrition Division of the Food and Nutrition Service of the Department.

Contractor means a commercial enterprise, public or nonprofit private organization or individual that enters into a contract with a school food authority.

Cost of milk means the net purchase price paid by the school or child care institution to the milk supplier for milk delivered to the school or child care institution. This shall not include any amount paid to the milk supplier for servicing, rental of or installment purchase of milk service equipment.

Cost reimbursable contract means a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed fee.

Department means the U.S. Department of Agriculture.

Disclosure means reveal or use individual children's program eligibility information obtained through the free

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milk eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

Family means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

Fiscal year means the period of 12 calendar months beginning October 1, 1977, and each October 1 of any calendar year thereafter and ending September 30 of the following calendar year.

Fixed fee means an agreed upon amount that is fixed at the inception of the contract. In a cost reimbursable contract, the fixed fee includes the contractor's direct and indirect administrative costs and profit allocable to the contract.

FNS means the Food and Nutrition Service of the U.S. Department of Agriculture.

FNSRO means Food and Nutrition Services Regional Offices, of the Food and Nutrition Service of the U.S. Department of Agriculture.

Free milk means milk for which neither the child nor any member of his family pays or is required to work in the school or child-care institution or in its food service.

Local educational agency means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institu-

tions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

Medicaid means the State medical assistance program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*).

Milk means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, *milk* shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

National School Lunch Program means the program under which general cash-for-food assistance and special cash assistance are made available to schools pursuant to part 210 of this chapter.

Needy children means:

(1) Children who attend schools participating in the Program and who meet the School Food Authority's eligibility standards for free milk approved by the State agency, or FNSRO where applicable, under part 245 of this chapter; and

(2) Children who attend child-care institutions participating in the Program and who meet the eligibility standards for free milk approved by the State agency, or FNSRO where applicable, under §215.13a of this part.

Nonpricing program means a program which does not sell milk to children. This shall include any such program in which children are normally provided milk, along with food and other services, in a school or child-care institution financed by a tuition, boarding, camping or other fee, or by private donations or endowments.

Nonprofit means, when applied to schools or institutions eligible for the Program, exempt from income tax

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under section 501(c)(3) of the Internal Revenue Code of 1986.

Nonprofit milk service means milk service maintained by or on behalf of the school or child-care institution for the benefit of the children, all of the income from which is used solely for the operation or improvement of such milk service.

Nonprofit school food service account means the restricted account in which all of the revenue from the nonprofit milk service maintained for the benefit of children is retained and used only for the operation or improvement of the nonprofit milk service.

OA means the Office of Audit of the United States Department of Agriculture.

OIG means the Office of the Inspector General of the Department.

Pricing program means a program which sells milk to children. This shall include any such program in which maximum use is made of Program reimbursement payments in lowering, or reducing to "zero," wherever possible, the price per half pint which children would normally pay for milk.

Program means the Special Milk Program for Children.

Reimbursement means financial assistance paid or payable to participating schools and child care institutions for milk served to eligible children.

School means: (1) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (2) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; or (3) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term *residential child care institutions* includes, but is not

limited to: Homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more.

School Breakfast Program means the program authorized by section 4 of the Child Nutrition Act of 1966, as amended.

School Food Authority means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a milk program therein. The term "School Food Authority" also includes a nonprofit agency to which such governing body has delegated authority for the operation of a milk program in a school.

School year means the period of 12 calendar months beginning July 1, 1977, and each July 1 of any calendar year thereafter and ending June 30 of the following calendar year.

Split-session means an educational program operating for approximately one-half of the normal school day.

State means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and, as applicable, American Samoa and the Commonwealth of the Northern Marianas.

State agency means the State educational agency or any other State agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program.

State Children's Health Insurance Program (SCHIP) means the State medical assistance program under title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*).

Summer Food Service Program for Children means the program authorized by section 13 of the National School Lunch Act, as amended.

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USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766; sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760; sec. 10(d)), Pub. L. 95-627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626; sec. 205, Pub. L. 96-499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1772, 1784, 1760))

[32 FR 12587, Aug. 31, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §215.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§215.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, CND shall be responsible for Program administration.

(b) Within the States, to the extent practicable and permissible under State law, responsibility for the administration of the Program in schools and child care institutions shall be in the educational agency of the State: *Provided, however,* That another State agency, upon request by the Governor or other appropriate State executive or legislative authority, may be approved to administer the Program in schools as described in paragraph (3) of the definition of *School* in §215.2 or in child care institutions.

(c) FNSRO shall administer the Program in any *School* or any *Child care institution* as defined in §215.2 wherein the State agency is not permitted by law to disburse Federal funds paid to it under the Program; *Provided, however,* That FNSRO shall also administer the Program in all other schools and child-care institutions which have been under continuous FNS administration since October 1, 1980 unless the admin-

istration of such schools and institutions is assumed by a State agency. References in this part to "FNSRO where applicable" are to FNSRO as the agency administering the Program to schools or child-care institutions within certain States.

(d) Each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part, 7 CFR parts 235, 245, 15, 15a, 15b and, as applicable, 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400, subparts B and D and USDA implementing regulations 2 CFR part 400 and part 415, and FNS Instructions. Such agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.

(Secs. 804, 816 and 817, Pub. L. 97-35; 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785))

[Amdt. 14, 41 FR 31174, July 27, 1976, as amended by Amdt. 24, 47 FR 14133 Apr. 2, 1982; Amdt. 36, 54 FR 2989, Jan. 23, 1989; 71 FR 39516, July 13, 2006; 72 FR 63791, Nov. 13, 2007; 81 FR 66490, Sept. 28, 2016]

§215.4 Payments of funds to States and FNSROs.

(a) For each fiscal year, the Secretary shall make payments to each State agency at such times as he may determine from the funds appropriated for Program reimbursement. Subject to §215.11(c)(2), the total of these payments for each State for any fiscal year shall be limited to the amount of reimbursement payable to School Food Authorities and child care institutions under §215.8 of this part for the total number of half-pints of milk served under the Program to eligible children from October 1 to September 30.

(b) Each State agency shall be responsible for controlling Program reimbursement payments so as to keep within the funds made available to it, and for the timely reporting to FNS of the number of half pints of milk actually served. The Secretary shall increase or decrease the available level of

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(f) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, The Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 90 Seventh Street, Suite 10-100, San Francisco, California 94103-6701.

(g) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, Colorado 80204.

(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 10(d)(3), Pub. L. 95-627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626); secs. 804, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, 1773 and 1785)

[Amdt. 14, 41 FR 31178, July 27, 1976, as amended by Amdt. 18, 44 FR 37898, June 29, 1979; Amdt. 27, 48 FR 195, Jan. 4, 1983; Amdt. 36, 54 FR 2990, Jan. 23, 1989; 65 FR 12435, Mar. 9, 2000. Redesignated at 72 FR 61493, Oct. 31, 2007, as amended at 76 FR 34569, June 13, 2011]

§215.18 Information collection/record-keeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control No.
215.3(d)	0584-0067
215.5(a)	0584-0005
215.7	0584-0005
215.10(a), (b), (d)	0584-0005
215.11(c)(1)	0584-0005
215.11(c)(2)	0584-0594
215.12(d)	0584-0005
215.13a	0584-0026
215.14a	0584-0005

[81 FR 50193, July 29, 2016]

PART 220—SCHOOL BREAKFAST PROGRAM

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 - 220.22 Information collection/record-keeping—OMB assigned control numbers.
- APPENDIX A TO PART 220—ALTERNATE FOODS FOR MEALS
- APPENDIX B TO PART 220 [RESERVED]
- APPENDIX C TO PART 220—CHILD NUTRITION (CN) LABELING PROGRAM

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

§220.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out the provisions of section 4 of the Child Nutrition Act of 1966, as amended, which authorizes payments to the States to assist them to initiate, maintain, or expand nonprofit breakfast programs in schools.

[Amdt. 25, 41 FR 34758, Aug. 17, 1976]

§220.2 Definitions.

For the purpose of this part the term: *2 CFR part 200*, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

Act means the Child Nutrition Act of 1966, as amended.

Applicable credits shall have the meaning established in 2 CFR part 200 and USDA implementing regulations 2 CFR part 400 and part 415.

Breakfast means a meal which meets the meal requirements set out in §§220.8 and 220.23, and which is served

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to a child in the morning hours. The meal shall be served at or close to the beginning of the child's day at school.

Child means:

(1) A student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (1) and (2) of the definition of "School", including students who are mentally or physically disabled as defined by the State and who are participating in a school program established for the mentally or physically disabled; or

(2) A person under 21 chronological years of age who is enrolled in an institution or center as described in paragraph (3) of the definition of *School* in this section.

CND means the Child Nutrition Division of the Food and Nutrition Service of the Department.

Contractor means a commercial enterprise, public or nonprofit private organization or individual that enters into a contract with a school food authority.

Cost reimbursable contract means a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed fee.

Department means the U.S. Department of Agriculture.

Distributing agency means a State, Federal, or private agency which enters into an agreement with the Department for the distribution of commodities pursuant to part 250 of this chapter.

Fiscal year means the period of 15 calendar months beginning July 1, 1976, and ending September 30, 1977; and the period of 12 calendar months beginning October 1, 1977, and each October 1 of any calendar year thereafter and ending September 30 of the following calendar year.

Fixed fee means an agreed upon amount that is fixed at the inception of the contract. In a cost reimbursable contract, the fixed fee includes the contractor's direct and indirect administrative costs and profit allocable to the contract.

FNS means the Food and Nutrition Service of the Department.

FNSRO means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the Department.

Free breakfast means a breakfast for which neither the child nor any member of his family pays or is required to work in the school or in the school's food service.

Infant cereal means any iron fortified dry cereal especially formulated and generally recognized as cereal for infants that is routinely mixed with breast milk or iron-fortified infant formula prior to consumption.

Infant formula means any iron-fortified infant formula intended for dietary use solely as a food for normal healthy infants excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

Local educational agency means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

Menu item means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of

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the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in § 220.23, except for those foods that are considered as foods of minimal nutritional value as provided for in the definition of *Foods of minimal nutritional value* in this section which are not offered as part of a menu item in a reimbursable meal. For the purposes of a reimbursable breakfast, a minimum of three menu items must be offered, one of which shall be fluid milk served as a beverage or on cereal or both; under offer versus serve, a student may decline only one menu item.

National School Lunch Program means the Program authorized by the National School Lunch Act.

Net cash resources means all monies as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a School Food Authority's nonprofit school food service at any given time, less cash payable. Such monies may include but are not limited to, cash on hand, cash receivable, earnings or investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

Nonprofit means, when applied to schools or institutions eligible for the Program, exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

Nonprofit school food service means all food service operations conducted by the School Food Authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food service.

Nonprofit school food service account means the restricted account in which all of the revenue from all food service operations conducted by the school food authority principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service.

Nonprofit when applied to schools or institutions eligible for the Program means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or in the Commonwealth of Puerto Rico, certified by the Governor.

Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning means ways to develop breakfast menus based on the analysis for nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met in accordance with § 220.23(e)(5). However, for the purposes of Assisted Nutrient Standard Menu Planning, breakfast menu planning and analysis are completed by other entities and must incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority in accordance with § 220.23(f).

OA means the Office of Audit of the Department.

OI means the Office of Investigation of the Department.

OIG means the Office of the Inspector General of the Department.

Program means the School Breakfast Program.

Reduced price breakfast means a breakfast which meets all of the following criteria: (1) The price shall be less than the full price of the breakfast, (2) the price shall be 30 cents or lower, and (3) neither the child nor any member of his family shall be required to supply an equivalent value in work for the school or the school's food service.

Reimbursement means financial assistance paid or payable to participating schools for breakfasts meeting the requirements of § 220.8 served to eligible children at rates assigned by the State agency, or FNSRO where applicable. The term "reimbursement" also includes financial assistance made available through advances to School Food Authorities.

Revenue when applied to nonprofit school food service means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

School means: (1) An educational unit of high school grade or under, recognized as part of the educational system

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in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (2) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; or (3) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term “residential child care institutions” includes, but is not limited to: Homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more.

School Breakfast Program means the program authorized by section 4 of the Child Nutrition Act of 1966.

School in severe need means a school determined to be eligible for rates of reimbursement in excess of the prescribed National Average Payment Factors, based upon the criteria set forth in § 220.9(d).

School Food Authority means the governing body which is responsible for the administration of one or more schools and which has legal authority to operate a breakfast program therein.

School week means the period of time used to determine compliance with the meal requirements in § 220.8 and § 220.23. The period must be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period must be a minimum of three consecutive days and a

maximum of seven consecutive days. Weeks in which school breakfasts are offered less than three times must be combined with either the previous or the coming week.

Secretary means the Secretary of Agriculture.

State means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and, as applicable, American Samoa and the Commonwealth of the Northern Marianas.

State agency means: (1) The State educational agency or (2) such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools as described in paragraph (3) of the definition of *School* in this section.

State educational agency means, as the State legislature may determine: (1) The chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State department of education.

Tofu means a soybean-derived food, made by a process in which soybeans are soaked, ground, mixed with water, heated, filtered, coagulated, and formed into cakes. Basic ingredients are whole soybeans, one or more food-grade coagulants (typically a salt or an acid), and water. Tofu products must conform to FNS guidance to count toward the meats/meat alternates component.

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

Whole grains means grains that consist of the intact, ground, cracked, or flaked grain seed whose principal anatomical components—the starchy endosperm, germ and bran—are present

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in the same relative proportions as they exist in the intact grain seed. Whole grain-rich products must conform to FNS guidance to count toward the grains component.

Yogurt means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, and 21 CFR 131.206, respectively.

(Sec. 6, Pub. L. 95–627, 92 Stat. 3620 (42 U.S.C. 1760); sec. 205, Pub. L. 96–499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 801, 803, 812; Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1753, 1759(a), 1773, 1758; secs. 807 and 808, Pub. L. 97–35, 95 Stat. 521–535, 42 U.S.C. 1772, 1784, 1760; sec. 819, Pub. L. 97–35; 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757))

[Amdt. 25, 41 FR 34758, Aug. 17, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 220.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 220.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program covered by this part. Within FNS, CND shall be responsible for administration of the Program.

(b) Within the States, responsibility for the administration of the Program in schools as described in paragraphs (1) and (2) of the definition of *School* in § 220.2 shall be in the State educational agency, except that FNSRO shall administer the Program with respect to nonprofit private schools and adding in their place the words “as described in paragraph (1) of the definition of *School* in § 220.2 in any State wherein the State educational agency is not permitted by law to disburse Federal funds paid to it under the Program; *Provided, however,* That FNSRO shall also administer the Program in all other nonprofit private schools which have been under continuous FNS administration since October 1, 1980, un-

less the administration of such private schools is assumed by a State agency.

(c) Within the States, responsibility for the administration of the Program in schools, as described in paragraph (3) of the definition of *School* in § 220.2, shall be in the State educational agency, or if the State educational agency cannot administer the Program in such schools, such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in such schools: *Provided, however,* That FNSRO shall administer the Program in such schools if the State agency is not permitted by law to disburse Federal funds paid to it under the Program to such schools; and *Provided, further,* That FNSRO shall also administer the Program in all other such schools which have been under continuous FNS administration since October 1, 1980, unless the administration of such schools is assumed by a State agency.

(d) References in this part to “FNSRO where applicable” are to FNSRO as the agency administering the Program.

(e) Each State agency desiring to take part in any of the programs shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part, 7 CFR parts 235, 245, 15, 15a, 15b and, as applicable, 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 subparts B and D and USDA implementing regulations 2 CFR part 400 and part 415 and FNS Instructions. Such agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.

(Sec. 804, 816 and 817, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785); 44 U.S.C. 3506)

[Amdt. 25, 41 FR 34759, Aug. 17, 1976, as amended at 47 FR 745, Jan. 7, 1982; Amdt. 42, 47 FR 14133, Apr. 2, 1982; Amdt. 56, 54 FR 2990, Jan. 23, 1989; 71 FR 39517, July 13, 2006; 72 FR 63792, Nov. 13, 2007; 81 FR 66491, Sept. 28, 2016]

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Subpart B—State Agency Provisions

- 225.4 Program management and administration plan.
- 225.5 Payments to State agencies and use of Program funds.
- 225.6 State agency responsibilities.
- 225.7 Program monitoring and assistance.
- 225.8 Records and reports.
- 225.9 Program assistance to sponsors.
- 225.10 Audits and management evaluations.
- 225.11 Corrective action procedures.
- 225.12 Claims against sponsors.
- 225.13 Appeal procedures.

Subpart C—Sponsor and Site Provisions

- 225.14 Requirements for sponsor participation.
- 225.15 Management responsibilities of sponsors.
- 225.16 Meal service requirements.

Subpart D—General Administrative Provisions

- 225.17 Procurement standards.
 - 225.18 Miscellaneous administrative provisions.
 - 225.19 Regional office addresses.
 - 225.20 Information collection/record-keeping—OMB assigned control numbers.
- APPENDIX A TO PART 225—ALTERNATE FOODS FOR MEALS
- APPENDIX B TO PART 225 [RESERVED]
- APPENDIX C TO PART 225—CHILD NUTRITION (CN) LABELING PROGRAM

AUTHORITY: Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

SOURCE: 54 FR 18208, Apr. 27, 1989, unless otherwise noted.

Subpart A—General

§ 225.1 General purpose and scope.

This part establishes the regulations under which the Secretary will administer a Summer Food Service Program. Section 13 of the Act authorizes the Secretary to assist States through grants-in-aid to conduct nonprofit food service programs for children during the summer months and at other approved times. The primary purpose of the Program is to provide food service to children from needy areas during periods when area schools are closed for vacation.

§ 225.2 Definitions.

2 CFR part 200, means the Uniform Administrative Requirements, Cost

Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

Act means the National School Lunch Act, as amended.

Administrative costs means costs incurred by a sponsor related to planning, organizing, and managing a food service under the Program, and excluding interest costs and operating costs.

Adult means, for the purposes of the collection of the last four digits of social security numbers as a condition of eligibility for Program meals, any individual 21 years of age or older.

Advance payments means financial assistance made available to a sponsor for its operating costs and/or administrative costs prior to the end of the month in which such costs will be incurred.

Areas in which poor economic conditions exist means:

(a) The attendance area of a school in which at least 50 percent of the enrolled children have been determined eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program;

(b) A geographic area where, based on the most recent census data available or information provided from a department of welfare or zoning commission, at least 50 percent of the children residing in that area are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program;

(c) A geographic area where a site demonstrates, based on other approved sources, that at least 50 percent of the children enrolled at the site are eligible for free or reduced-price meals under the National School Lunch Program and the School Breakfast Program; or

(d) A closed enrolled site.

Camps means residential summer camps and nonresidential day camps

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which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule of organized cultural or recreational programs for enrolled children between meal services.

Children means (a) persons 18 years of age and under, and (b) persons over 18 years of age who are determined by a State educational agency or a local public educational agency of a State to be mentally or physically handicapped and who participate in a public or non-profit private school program established for the mentally or physically handicapped.

Closed enrolled site means a site which is open only to enrolled children, as opposed to the community at large, and in which at least 50 percent of the enrolled children at the site are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined by approval of applications in accordance with § 225.15(f).

Continuous school calendar means a situation in which all or part of the student body of a school is (a) on a vacation for periods of 15 continuous school days or more during the period October through April and (b) in attendance at regularly scheduled classes during most of the period May through September.

Costs of obtaining food means costs related to obtaining food for consumption by children. Such costs may include, in addition to the purchase price of agricultural commodities and other food, the cost of processing, distributing, transporting, storing, or handling any food purchased for, or donated to, the Program.

Current income means income, as defined in § 225.15(f)(4)(vi), received during the month prior to application for free meals. If such income does not accurately reflect the household's annual income, income must be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

Department means the U.S. Department of Agriculture.

Disclosure means reveal or use individual children's program eligibility information obtained through the free and reduced price meal eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

Documentation means:

(a) The completion of the following information on a free meal application:

(1) Names of all household members;

(2) Income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income);

(3) The signature of an adult household member; and

(4) The last four digits of the social security number of the adult household member who signs the application, or an indication that the adult does not possess a social security number; or

(b) For a child who is a member of a household receiving SNAP, FDPIR, or TANF benefits, "documentation" means completion of only the following information on a free meal application:

(1) The name(s) and appropriate SNAP, FDPIR, or TANF case number(s) for the child(ren); and

(2) the signature of an adult member of the household.

Experienced site means a site which, as determined by the State agency, has successfully participated in the Program in the prior year.

Experienced sponsor means a sponsor which, as determined by the State agency, has successfully participated in the Program in the prior year.

Family means a group of related or nonrelated individuals who are not residents of an institution or boarding house but who are living as one economic unit.

FDPIR household means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Distribution Program on Indian Reservations.

Fiscal year means the period beginning October 1 of any calendar year

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and ending September 30 of the following calendar year.

FNS means the Food and Nutrition Service of the Department.

FNSRO means the appropriate FNS Regional Office.

Food service management company means any commercial enterprise or nonprofit organization with which a sponsor may contract for preparing unitized meals, with or without milk, for use in the Program, or for managing a sponsor's food service operations in accordance with the limitations set forth in §225.15. Food service management companies may be: (a) Public agencies or entities; (b) private, nonprofit organizations; or (c) private, for-profit companies.

Foster child means a child who is formally placed by a court or a State child welfare agency, as defined in §245.2 of this chapter.

Household means "family," as defined in this section.

Income accruing to the program means all funds used by a sponsor in its food service program, including but not limited to all monies, other than program payments, received from Federal, State and local governments, from food sales to adults, and from any other source including cash donations or grants. Income accruing to the Program will be deducted from combined operating and administrative costs.

Income standards means the family-size and income standards prescribed annually by the Secretary for determining eligibility for reduced price meals under the National School Lunch Program and the School Breakfast Program.

Meals means food which is served to children at a food service site and which meets the nutritional requirements set out in this part.

Medicaid means the State medical assistance program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*).

Milk means whole milk, lowfat milk, skim milk, and buttermilk. All milk must be fluid and pasteurized and must meet State and local standards for the appropriate type of milk. Milk served may be flavored or unflavored. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the

Pacific Islands, the Northern Mariana Islands, and the Virgin Islands of the United States, if a sufficient supply of such types of fluid milk cannot be obtained, reconstituted or recombined milk may be used. All milk should contain Vitamins A and D at the levels specified by the Food and Drug Administration and at levels consistent with State and local standards for such milk.

Needy children means children from families whose incomes are equal to or below the Secretary's Guidelines for Determining Eligibility for Reduced Price School Meals.

New site means a site which did not participate in the Program in the prior year, or, as determined by the State agency, a site which has experienced significant staff turnover from the prior year.

New sponsor means a sponsor which did not participate in the Program in the prior year, or, as determined by the State agency, a sponsor which has experienced significant staff turnover from the prior year.

NYSP means the National Youth Sports Program administered by the National Collegiate Athletic Association.

NYSP feeding site means a site at which all of the children receiving Program meals are enrolled in the NYSP and which qualifies for Program participation on the basis of documentation that the site meets the definition of "areas in which poor economic conditions exist" as provided in this section.

OIG means the Office of the Inspector General of the Department.

Open site means a site at which meals are made available to all children in the area and which is located in an area in which at least 50 percent of the children are from households that would be eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined in accordance with paragraph (a) of the definition of *Areas in which poor economic conditions exist*.

Operating costs means the cost of operating a food service under the Program,

(a) Including the (1) cost of obtaining food, (2) labor directly involved in the preparation and service of food, (3) cost of nonfood supplies, (4) rental and use allowances for equipment and space, and (5) cost of transporting children in rural areas to feeding sites in rural areas, but

(b) Excluding (1) the cost of the purchase of land, acquisition or construction of buildings, (2) alteration of existing buildings, (3) interest costs, (4) the value of in-kind donations, and (5) administrative costs.

Private nonprofit means tax exempt under section 501(a) of the Internal Revenue Code of 1986, as amended.

Private nonprofit organization means an organization (other than private nonprofit residential camps, school food authorities, or colleges or universities participating in the NYSP) that:

(a) Exercises full control and authority over the operation of the Program at all sites under the sponsorship of the organization;

(b) Provides ongoing year-round activities for children or families;

(c) Demonstrates that the organization has adequate management and the fiscal capacity to operate the Program;

(d) Is an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code; and

(e) Meets applicable State and local health, safety, and sanitation standards.

Program means the Summer Food Service Program for Children authorized by Section 13 of the Act.

Program funds means Federal financial assistance made available to State agencies for the purpose of making Program payments.

Program payments means financial assistance in the form of start-up payments, advance payments, or reimbursement paid to sponsors for operating and administrative costs.

Restricted open site means a site which is initially open to broad community participation, but at which the sponsor restricts or limits attendance for reasons of security, safety or control. Site eligibility for a restricted open site shall be documented in accordance with paragraph (a) of the definition of

Areas in which poor economic conditions exist.

Rural means (a) any area in a county which is not a part of a Metropolitan Statistical Area or (b) any “pocket” within a Metropolitan Statistical Area which, at the option of the State agency and with FNSRO concurrence, is determined to be geographically isolated from urban areas.

School food authority means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program in those schools. In addition, for the purpose of determining the applicability of food service management company registration and bid procedure requirements, “school food authority” also means any college or university which participates in the Program.

Secretary means the Secretary of Agriculture.

Self-preparation sponsor means a sponsor which prepares the meals that will be served at its site(s) and does not contract with a food service management company for unitized meals, with or without milk, or for management services.

Session means a specified period of time during which an enrolled group of children attend camp.

Site means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.

SNAP household means any individual or group of individuals which is currently certified to receive assistance as a household from SNAP, the Supplemental Nutrition Assistance Program, as defined in §245.2 of this chapter.

Special account means an account which a State agency may require a vended sponsor to establish with the State agency or with a Federally insured bank. Operating costs payable to the sponsor by the State agency are deposited in the account and disbursement of monies from the account must be authorized by both the sponsor and the food service management company.

Sponsor means a public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or State government, a

public or private nonprofit college or university currently participating in the NYSP, or a private nonprofit organization which develops a special summer or other school vacation program providing food service similar to that made available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. Sponsors are referred to in the Act as “service institutions”.

Start-up payments means financial assistance made available to a sponsor for administrative costs to enable it to effectively plan a summer food service, and to establish effective management procedures for such a service. These payments shall be deducted from subsequent administrative cost payments.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

State agency means the State educational agency or an alternate agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and which has been approved by the Department to administer the Program within the State, or, in States where FNS administers the Program, FNSRO.

State Children’s Health Insurance Program (CHIP) means the State medical assistance program under title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*).

TANF means the State funded program under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995. This program is commonly referred to as Temporary Assistance for Needy Families, although States may refer to the program by another name.

Unit of local, municipal, county or State government means an entity which is so recognized by the State constitution or State laws, such as the State administrative procedures act, tax laws, or other applicable State laws

which delineate authority for government responsibility in the State.

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

Vended sponsor means a sponsor which purchases from a food service management company the unitized meals, with or without milk, which it will serve at its site(s), or a sponsor which purchases management services, subject to the limitations set forth in § 225.15, from a food service management company.

Yogurt means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration’s Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, (21 CFR 131.200), (21 CFR 131.203), (21 CFR 131.206), respectively.

[54 FR 18208, Apr. 27, 1989, as amended at 54 FR 27153, June 28, 1989; 55 FR 13466, Apr. 10, 1990; 61 FR 25553, May 22, 1996; 64 FR 72483, Dec. 28, 1999; 64 FR 72895, Dec. 29, 1999; 66 FR 2202, Jan. 11, 2001; 71 FR 39518, July 13, 2006; 72 FR 10895, Mar. 12, 2007; 76 FR 22798, Apr. 25, 2011; 78 FR 13449, Feb. 28, 2013; 81 FR 66492, Sept. 28, 2016]

§ 225.3 Administration.

(a) *Responsibility within the Department.* FNS shall act on behalf of the Department in the administration of the Program.

(b) *State administered programs.* Within the State, responsibility for the administration of the Program shall be in the State agency. Each State agency must notify the Department by November 1 of the fiscal year regarding its intention to administer the Program. Each State agency desiring to take part in the Program shall enter into a written agreement with FNS for the

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discrimination against, or overt identification of children unable to pay the full price for meals or milk.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[Amdt. 6, 39 FR 30337, Aug. 22, 1974, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; 47 FR 31852, July 23, 1982; 72 FR 63792, Nov. 13, 2007]

§ 245.2 Definitions.

Adult means any individual 21 years of age or older.

Categorically eligible means considered income eligible for free meals or free milk, as applicable, based on documentation that a child is a member of a *Family*, as defined in this section, and one or more children in that family are receiving assistance under *SNAP*, *FDPIR* or the *TANF* program, as defined in this section. A *Foster child*, *Homeless child*, a *Migrant child*, a *Head Start child* and a *Runaway child*, as defined in this section, are also categorically eligible. Categorical eligibility and automatic eligibility may be used synonymously.

Commodity school means a school which does not participate in the National School Lunch Program under part 210 of this chapter, but which enters into an agreement as provided in § 210.15a(b) to receive commodities donated under part 250 of this chapter for a nonprofit lunch program.

Current income means income, as defined in § 245.6(a), received during the month prior to application. If such income does not accurately reflect the household's annual rate of income, income shall be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual rate of income.

Direct certification means determining a child is eligible for free meals or free milk, as applicable, based on documentation obtained directly from the appropriate State or local agency or individuals authorized to certify that the child is a member of a household receiving assistance under *SNAP*, as defined in this section; is a member of a household receiving assistance under *FDPIR* or under the *TANF* program, as

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defined in this section; a *Foster child*, *Homeless child*, a *Migrant child*, a *Head Start child* and a *Runaway child*, as defined in this section.

Disclosure means reveal or use individual children's program eligibility information obtained through the free and reduced price meal or free milk eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

Documentation means:

(1) The completion of a free and reduced price school meal or free milk application which includes:

(i) For households applying on the basis of income and household size, names of all household members; income received by each household member, identified by source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security and other cash income); the signature of an adult household member; and the last four digits of the social security number of the adult household member who signs the application or an indication that the adult does not possess a social security number; or

(ii) For a child who is receiving assistance under *SNAP*, *FDPIR* or *TANF*, as defined in this section, the child's name and appropriate *SNAP* or *TANF* case number or *FDPIR* case number or other *FDPIR* identifier and signature of an adult household member.

(2) In lieu of completion of the free and reduced price meal application:

(i) Information obtained from the State or local agency responsible for administering *SNAP*, *FDPIR* or *TANF*, as defined in this section. Documentation for these programs includes the name of the child; a statement certifying that the child is a member of a household receiving assistance under *SNAP*, *FDPIR* or *TANF*, as defined in this section; information in sufficient detail to match the child attending school in the local educational agency with the name of a child who is a member of one of the applicable programs as defined in this section; the signature

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of the official from the applicable program who is authorized to provide such documentation on behalf of that program and the date that the official signed the certification statement;

(ii) A letter or other document provided to the household by the agency administering *FDPIR* or the *TANF* program, as defined in this section or by the court, entity, or official authorized to administer an eligible program for a *Foster child*, a *Homeless child*, a *Migrant child*, a *Head Start child*, or a *Runaway child* as defined in this section.

(iii) Information from the local educational agency, such as enrollment information or information from applications submitted for free or reduced price meals, or from SNAP, *FDPIR* or *TANF* program officials that indicate there are children in a *Family*, as defined in this section, who were not documented as receiving assistance under SNAP, *FDPIR* or *TANF*, in order to extend categorical eligibility to such children as found in §245.6(b)(7). Documentation for these purposes is the information discussed in paragraph (2)(i) of this definition, plus a written statement by a local educational agency official briefly explaining how the presence of additional children in the family was determined.

(iv) Information obtained from an official responsible for determining if a child is a *Foster child*, a *Homeless child*, a *Migrant child*, a *Head Start child*, or a *Runaway child*, as defined in the section. Documentation for these children includes the name of the child; a statement certifying that the child has been determined eligible for that program or is enrolled in the Head Start Program; information in sufficient detail to match the child attending school in the local educational agency with the name of a child who has been determined eligible for that program or is enrolled in an eligible Head Start Program; the signature of the official from the program who is authorized to provide such documentation on behalf of that program and the date that the official signed the certification statement. Documentation may also be a list of children, a computer match, or a court document that includes this information.

(v) When a signature is impracticable to obtain, such as in a computer match, the local educational agency shall have a method to ensure that a responsible official can attest to the accuracy of the information provided.

Family means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

FDPIR means the food distribution program for households on Indian reservations operated under part 253 of this title.

FNS means the Food and Nutrition Service, United States Department of Agriculture.

FNSRO where applicable means the appropriate Food and Nutrition Service Regional Office when that agency administers the National School Lunch Program, School Breakfast Program or Special Milk Program with respect to nonprofit private schools.

Foster child means a child who is formally placed by a court or an agency that administers a State plan under parts B or E of title IV of the Social Security Act (42 U.S.C. 621 *et seq.*). It does not include a child in an informal arrangement that may exist outside of State or court based systems.

Free meal means a meal for which neither the child nor any member of his family pays or is required to work in the school or in the school's food service.

Free milk means milk served under the regulations governing the Special Milk Program and for which neither the child nor any member of his family pays or is required to work in the school or in the school's food service.

Head Start child means a child enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 *et seq.*)

Homeless child means a child identified as lacking a fixed, regular and adequate nighttime residence, as specified under section 725(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)) by the local educational agency liaison, director of a homeless shelter or other individual identified by FNS.

Household means "family" as defined in this section.

Household application means an application for free and reduced price meal or milk benefits, submitted by a household for a child or children who attend school(s) in the same local educational agency.

Income eligibility guidelines means the family-size income levels prescribed annually by the Secretary for use by States in establishing eligibility for free and reduced price meals and for free milk.

Local educational agency means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

Meal means a lunch or meal supplement or a breakfast which meets the applicable requirements prescribed in §§ 210.10, 210.15a, and 220.8 of this chapter.

Medicaid means the State medical assistance program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*).

Migrant child means a child identified as meeting the definition of migrant in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399) by the State or local Migrant Education Program coordinator or the local educational liaison, or other individual identified by FNS.

Milk means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (0 to 1 year of age) milk means unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meet such standards. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, “milk” shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

Nonprofit means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

Operating day means a day that reimbursable meals are offered to eligible students under the National School Lunch Program or School Breakfast Program.

Reduced price meal means a meal which meets all of the following criteria: (1) The price shall be less than the full price of the meal; (2) the price shall not exceed 40 cents for a lunch and 30 cents for a breakfast; and (3) neither the child nor any member of his family shall be required to supply an equivalent value in work for the school or the school’s food service.

Runaway child means a child identified as a runaway receiving assistance under a program under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*) by the local educational liaison, or other individual in accordance with guidance issued by FNS.

Service institution shall have the meaning ascribed to it in part 225 of this chapter.

School, school food authority, and other terms and abbreviations used in this part shall have the meanings ascribed to them in part 210 of this chapter.

SNAP means the Supplemental Nutrition Assistance Program established under the Food and Nutrition Act of

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2008 (7 U.S.C. 2011 *et. seq.*) and operated under parts 271 and 283 of this chapter.

SNAP household means any individual or group of individuals currently certified to receive assistance as a household from *SNAP*.

Special Assistance Certification and Reimbursement Alternatives means the three optional alternatives for free and reduced price meal application and claiming procedures in the National School Lunch Program and School Breakfast Program which are available to those School Food Authorities with schools in which at least 80 percent of the enrolled children are eligible for free or reduced price meals, or schools which are currently, or who will be serving all children free meals.

State Children's Health Insurance Program (SCHIP) means the State medical assistance program under title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*).

TANF means the State funded program under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995. This program is commonly referred to as Temporary Assistance for Needy Families, although States may refer to the program by another name.

Verification means confirmation of eligibility for free or reduced price benefits under the National School Lunch Program or School Breakfast Program. Verification shall include confirmation of income eligibility and, at State or local discretion, may also include confirmation of any other information required in the application which is defined as *Documentation* in §245.2. Such verification may be accomplished by examining information provided by the household such as wage stubs, or by other means as specified in §245.6a(a)(7). If a *SNAP* or *TANF* case number or a *FDPIR* case number or other identifier is provided for a child, verification for such child shall only include confirmation that the child is a member of a household receiving *SNAP*, *TANF* or *FDPIR* benefits. Verification may also be completed through direct contact with one or

more of the public agencies as specified in §245.6a(g).

(Secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758))

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §245.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§245.3 Eligibility standards and criteria.

(a) Each State agency, or FNSRO where applicable, shall by July 1 of each year announce family-size income standards to be used by local educational agencies, as defined in §245.2, under the jurisdiction of such State agency, or FNSRO where applicable, in making eligibility determinations for free or reduced price meals and for free milk. Such family size income standards for free and reduced price meals and for free milk shall be in accordance with Income Eligibility Guidelines published by the Department by notice in the FEDERAL REGISTER.

(b) Each participating local educational agency and all participating schools under its jurisdiction must adhere to the eligibility criteria specified in this part. Local educational agencies must include these eligibility criteria in their policy statement as required under §245.10 and it must be publicly announced in accordance with the provisions of §245.5. Additionally, each State agency, or FNSRO where applicable, must require that local educational agencies accept as income eligible for free meals and free milk, children who are categorically eligible for those benefits based on documentation of eligibility, as specified in §245.6 (b).

(c) Each School Food Authority shall serve free and reduced price meals or free milk in the respective programs to children eligible under its eligibility criteria. When a child is not a member of a family (as defined in §245.2), the child shall be considered a family of one. In any school which participates in more than one of the child nutrition programs, eligibility shall be applied uniformly so that eligible children receive the same benefits in each program. If a child transfers from one

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- 247.30 Claims.
- 247.31 Audits and investigations.
- 247.32 Termination of agency participation.
- 247.33 Fair hearings.
- 247.34 Management reviews.
- 247.35 Local agency appeals of State agency actions.
- 247.36 Confidentiality of applicants or participants.
- 247.37 Civil rights requirements.

AUTHORITY: Sec. 5, Pub. L. 93-86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97-98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98-8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98-92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99-198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100-202; sec. 1771(a), Pub. L. 101-624, 101 Stat. 3806 (7 U.S.C. 612c note); sec. 402(a), Pub. L. 104-127, 110 Stat. 1028 (7 U.S.C. 612c note); sec. 4201, Pub. L. 107-171, 116 Stat. 134 (7 U.S.C. 7901 note); sec. 4221, Pub. L. 110-246, 122 Stat. 1886 (7 U.S.C. 612c note); sec. 4221, Pub. L. 113-79, 7 U.S.C. 612c note).

SOURCE: 70 FR 47063, Aug. 11, 2005, unless otherwise noted.

§ 247.1 Definitions.

Following is a list of definitions that apply to the Commodity Supplemental Food Program (CSFP).

2 CFR part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

Applicant means any person who applies to receive program benefits. Applicants include program participants applying for recertification.

Breastfeeding women means women up to one year postpartum who are breastfeeding their infants.

Caseload means the number of persons the State agency may serve on an average monthly basis over the course of the caseload cycle.

Caseload cycle means the period from January 1 through the following December 31.

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Certification means the use of procedures to determine an applicant's eligibility for the program.

Certification period means the period of time that a participant may continue to receive program benefits without a review of his or her eligibility.

Children means persons who are at least one year of age but have not reached their sixth birthday.

Commodities means nutritious foods purchased by USDA to supplement the diets of CSFP participants.

CSFP means the Commodity Supplemental Food Program.

Department means the U.S. Department of Agriculture.

Disqualification means the act of ending Program participation of a participant as a punitive sanction.

Dual participation means simultaneous participation by an individual in CSFP and the WIC Program, or in CSFP at more than one distribution site.

Elderly persons means persons at least 60 years of age.

Fiscal year means the period from October 1 through the following September 30.

FNS means the Food and Nutrition Service.

Infants means persons under one year of age.

Local agency means a public or private nonprofit agency, including an Indian tribal organization, which enters into an agreement with the State agency to administer CSFP at the local level.

Nonprofit agency means a private agency or organization with tax-exempt status under the Internal Revenue Code, or that has applied for tax-exempt status with the Internal Revenue Service.

Postpartum women means women up to one year after termination of pregnancy.

Proxy means any person designated by a participant, or by the participant's adult parent or caretaker, to obtain supplemental foods on behalf of the participant.

7 CFR part 250 means the Department's regulations pertaining to the donation of foods for use in USDA food distribution programs.

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State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

State agency means the agency designated by the State to administer CSFP at the State level; an Indian tribe or tribal organization recognized by the Department of the Interior that administers the program for a specified tribe or tribes; or, the appropriate area office of the Indian Health Service of the Department of Health and Human Services.

State Plan means the document that describes the manner in which the State agency intends to administer the program in the State.

Subdistributing agency means an agency or organization that has entered into an agreement with the State agency to perform functions normally performed by the State, such as entering into agreements with eligible recipient agencies under which commodities are made available, ordering commodities and/or making arrangements for the storage and delivery of such commodities on behalf of eligible recipient agencies.

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

WIC Program means the Special Supplemental Nutrition Program for Women, Infants, and Children.

[70 FR 47063, Aug. 11, 2005, as amended at 81 FR 66495, Sept. 28, 2016]

§ 247.2 The purpose and scope of CSFP.

(a) *How does CSFP help participants?* Through CSFP, the Department provides nutritious commodities to help State and local agencies meet the nutritional needs of low-income elderly persons. CSFP also helps State and local agencies meet the nutritional

needs of women, infants, and children who were certified and receiving CSFP benefits as of February 6, 2014. Through local agencies, each participant receives a monthly package of commodities, based on food package guide rates developed by FNS, with input from State and local agencies. Food packages include such nutritious foods as canned fruits and vegetables, canned meat, poultry and other protein items, and grain products such as pasta, as well as other foods. Participants are offered the opportunity to receive nutrition education.

(b) *How many persons may be served in CSFP?* State agencies may serve eligible persons up to the caseload limit assigned to them by FNS. Caseload is the number of persons that may be served on an average monthly basis over the course of the caseload cycle, which extends from January 1 through the following December 31.

[70 FR 47063, Aug. 11, 2005, as amended at 79 FR 38750, July 9, 2014]

§ 247.3 Administering agencies.

(a) *What agencies are responsible for administering CSFP?* CSFP is administered at the Federal level by the Department's Food and Nutrition Service (FNS), which provides commodities, assigns caseload, and allocates administrative funds to State agencies. State agencies are responsible for administering the program at the State level. The State agency may select local agencies to administer the program in local areas of the State. The State agency must provide guidance to local agencies on all aspects of program operations. The State agency may also select subdistributing agencies (e.g., another State agency, a local governmental agency, or a nonprofit organization) to distribute or store commodities, or to perform other program functions on behalf of the State agency. Local or subdistributing agencies may also select other agencies to perform specific program functions (e.g., food distribution or storage), with the State agency's approval. Although the State agency may select other organizations to perform specific activities, the State agency is ultimately responsible for all aspects of program administration.

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PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

Subpart A—General

Sec.

- 248.1 General purpose and scope.
- 248.2 Definitions.
- 248.3 Administration.

Subpart B—State Agency Eligibility

- 248.4 State Plan.
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- 248.6 Recipient eligibility.
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Subpart E—State Agency Provisions

- 248.10 Coupon and market management.
- 248.11 Financial management system.
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- 248.14 Distribution of funds.
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Subpart F—Monitoring and Review of State Agencies

- 248.17 Management evaluations and reviews.
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Subpart G—Miscellaneous Provisions

- 248.20 Claims and penalties.
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- 248.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.
- 248.23 Records and reports.
- 248.24 Other provisions.
- 248.25 FMNP information.
- 248.26 OMB control number.

AUTHORITY: 42 U.S.C. 1786.

SOURCE: 59 FR 11517, Mar. 11, 1994, unless otherwise noted.

Subpart A—General

§ 248.1 General purpose and scope.

This part announces regulations under which the Secretary of Agriculture shall carry out the WIC Farm-

ers' Market Nutrition Program. The dual purposes of the FMNP are:

(a) To provide resources in the form of fresh, nutritious, unprepared foods (fruits and vegetables) from farmers' markets to women, infants, and children who are nutritionally at risk and who are participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) or are on the waiting list for the WIC Program; and

(b) To expand the awareness, use of and sales at farmers' markets.

This will be accomplished through payment of cash grants to approved State agencies which administer the FMNP and deliver benefits at no cost to eligible persons. The FMNP shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq.*) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

§ 248.2 Definitions.

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

Administrative costs means those direct and indirect costs, exclusive of food costs, as defined in §248.12(b), which State agencies determine to be necessary to support FMNP operations. Administrative costs include, but are not limited to, the costs of administration, start-up, training, monitoring, auditing, the development of and accountability for coupon and market management, nutrition education, outreach, eligibility determination, and developing, printing, and distributing coupons.

Compliance buy means a covert, on-site investigation in which a FMNP representative poses as a FMNP participant and transacts one or more FMNP food coupons.

Coupon means a coupon, voucher, or other negotiable financial instrument by which benefits under the FMNP are transferred to recipients.

Days means calendar days.

Demonstration project means the Farmers' Market Coupon Demonstration Project authorized by section

17(m) of the Child Nutrition Act of 1966 (CNA), (42 U.S.C. 1786(m)), as amended by section 501 of the Hunger Prevention Act of 1988 (Pub. L. 100-435), enacted September 19, 1988. Public Law 102-314 authorized the Secretary to competitively award, subject to the availability of funds, a 3-year grant (which was subsequently extended for an additional year by Public Law 102-142) to up to 10 States that submitted applications that were approved for the establishment of demonstration projects designed to provide WIC participants with coupons that could be exchanged for fresh, nutritious, unprepared foods at farmers' markets. Those States are: Connecticut, Iowa, Maryland, Massachusetts, Michigan, New York, Pennsylvania, Texas, Vermont, and Washington.

Department means the U.S. Department of Agriculture.

Eligible foods means fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Honey, maple syrup, cider, nuts, seeds, eggs, meat, cheese and seafood are examples of foods not eligible for purposes of the FMNP. State agencies shall consider locally grown to mean produce grown only within State borders but may also define it to include areas in neighboring States adjacent to its borders. Under no circumstances can produce grown outside of the United States and its territories be considered eligible foods.

Farmer means an individual authorized to sell produce at participating farmers' markets and/or roadside stands. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the FMNP. For purposes of this part, the term "farmer" shall mean "producer" as that term is used in section 17(m)(6)(D) of the CNA (42 U.S.C. 1786(m)(6)(D)). A participating State agency has the option to authorize individual farmers, farmers' markets and/or roadside stands.

Farmers' market means an association of local farmers who assemble at a de-

finied location for the purpose of selling their produce directly to consumers.

Fiscal year means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

FMNP funds means Federal grant funds provided for the FMNP, plus the required matching funds.

FNS means the Food and Nutrition Service of the U.S. Department of Agriculture.

Food costs means the cost of eligible supplemental foods.

Household has the same definition as that of "family" defined in §246.2 of this chapter. Each such family shall constitute a separate household for FMNP benefit issuance purposes.

In-kind contributions means property or services which benefit the FMNP and which are contributed by non-Federal parties without charge to the FMNP.

Local agency means any nonprofit entity or local government agency which issues FMNP coupons, and provides nutrition education and/or information on operational aspects of the FMNP to FMNP recipients.

Matching requirement means State, local or private funds, or program income, equal to not less than 30 percent of the administrative FMNP cost for the fiscal year. The Secretary may negotiate with an Indian State agency a lower percentage of matching funds, but not less than 10 percent of the administrative cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. The match may be satisfied through expenditures for similar farmers' market programs which operate during the same period as the FMNP. Similar programs include other farmers' market programs which serve low-income women, infants and children (who may or may not be WIC participants or on the waiting list for WIC services), as well as other categories of low-income recipients, such as, but not limited to, low-income elderly persons.

Nonprofit agency means a private agency which is exempt from income tax under the Internal Revenue Code of 1986, as amended, (26 U.S.C. 1 *et. seq.*).

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Nutrition education means individual or group education sessions and the provision of information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

OIG means the Department's Office of the Inspector General.

Program or FMNP means the WIC Farmers' Market Nutrition Program authorized by section 17(m) of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1786(m)), as amended. The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is authorized by section 17 of the CNA, as amended. Within section 17, section 17(m) authorizes the FMNP.

Recipient means a person chosen by the State agency to receive FMNP benefits. Such person must be a woman, infant over 4 months of age, or child, who receives benefits under the WIC Program or is on the waiting list to receive benefits under the WIC Program.

Roadside stand means a location at which an individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers' market.

SFPD means the Supplemental Food Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

Similar programs means other farmers' market projects or programs which serve low-income women, infants and children, or other categories of recipients, such as, but not limited to, elderly persons.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

State agency means the agriculture department, the health department or any other agency approved by the chief executive officer of the State; an Indian tribe, band or group recognized by the Department of the Interior; an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by

the Department of the Interior and which has an ongoing relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service (IHS), an agency of the Department of Health and Human Services.

State Plan means a plan of FMNP operation and administration that describes the manner in which the State agency intends to implement, operate and administer all aspects of the FMNP within its jurisdiction in accordance with § 248.4.

Total FMNP funds means the sum of the Federal funds provided to the State agency and non-Federal contributions provided by the State agency for FMNP purposes.

WIC means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771 *et. seq.*).

[59 FR 11517, Mar. 11, 1994, as amended at 60 FR 49745, Sept. 27, 1995; 64 FR 48076, Sept. 2, 1999; 73 FR 65249, Nov. 3, 2008]

§ 248.3 Administration.

(a) *Delegation to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the FMNP. Within FNS, SFPD and the FNS Regional Offices are responsible for FMNP administration. FNS shall provide assistance to State agencies and evaluate all levels of FMNP operations to ensure that the goals of the FMNP are achieved in the most effective and efficient manner possible.

(b) *Delegation to State agency.* The State agency is responsible for the effective and efficient administration of the FMNP in accordance with the requirements of this part; the requirements of the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a and 15b), administration of grants (2 CFR part 200, subparts A, B, D, E and F and USDA implementing regulations 2 CFR part 400 and part 415), nonprocurement debarment/suspension (2 CFR part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension and USDA implementing regulations 2 CFR part 417), drug-free workplace (2 CFR part

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Lunch Act for the National School Lunch Program (NSLP)); or

(2) Authorizing the removal of surplus foods from the market or the support of food prices (*i.e.*, in accordance with Section 32, Section 416, and Section 709, as defined in §250.2).

(b) *Use of donated foods.* Donated foods must be used in accordance with the requirements of this part and with other Federal regulations applicable to specific food assistance programs (*e.g.*, 7 CFR part 251 includes requirements for the use of donated foods in The Emergency Food Assistance Program (TEFAP)). Such use may include activities designed to demonstrate or test the effective use of donated foods (*e.g.*, in nutrition classes or cooking demonstrations) in any programs. However, donated foods may not be:

(1) Sold or exchanged, or otherwise disposed of, unless approved by FNS, or specifically permitted elsewhere in this part or in other Federal regulations (*e.g.*, donated foods may be used in meals sold in NSLP);

(2) Used to require recipients to make any payments or perform any services in exchange for their receipt, unless approved by FNS, or specifically permitted elsewhere in this part or in other Federal regulations; or

(3) Used to solicit voluntary contributions in connection with their receipt, except for donated foods provided in the Nutrition Services Incentive Program (NSIP).

(c) *Legislative sanctions.* In accordance with the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) and the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note), any person who embezzles, willfully misapplies, steals, or obtains by fraud any donated foods (or funds, assets, or property deriving from such donated foods) will be subject to Federal criminal prosecution and other penalties. Any person who receives, conceals, or retains such donated foods or funds, assets, or property deriving from such foods, with the knowledge that they were embezzled, willfully misapplied, stolen, or obtained by fraud, will also be subject to Federal criminal prosecution and other penalties. The distributing agency, or other parties, as appli-

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cable, must immediately notify FNS of any such violations.

§ 250.2 Definitions.

2 CFR part 200 means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The Part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) do not apply to the National School Lunch Program).

ACL means the Administration for Community Living, which is the DHHS agency that administers NSIP.

Administering agency means a State agency that has been approved by the Department to administer a food assistance program. If such agency is also responsible for the distribution of donated foods, it is referred to as the distributing agency in this part.

Adult care institution means a nonresidential adult day care center that participates independently in CACFP, or that participates as a sponsoring organization, and that may receive donated foods or cash-in-lieu of donated foods, in accordance with an agreement with the distributing agency.

Bonus foods means Section 32, Section 416, and Section 709 donated foods, as defined in this section, which are purchased under surplus removal or price support authority, and provided to distributing agencies in addition to legislatively authorized levels of assistance.

CACFP means the Child and Adult Care Food Program.

Carrier means a commercial enterprise that transports donated foods from one location to another, but does not store such foods.

Charitable institutions means public institutions or private nonprofit organizations that provide a meal service on a regular basis to predominantly eligible persons in the same place without marked changes. Some types of charitable institutions are included in § 250.67.

Child care institution means a nonresidential child care center that participates independently in CACFP, or that participates as a sponsoring organization, in accordance with an agreement with the distributing agency.

Child nutrition program means NSLP, CACFP, SFSP, or SBP.

Commodity offer value means the minimum value of donated foods that the distributing agency must offer to a school food authority participating in NSLP each school year. The commodity offer value is equal to the national per-meal value of donated food assistance multiplied by the number of reimbursable lunches served by the school food authority in the previous school year.

Commodity school means a school that operates a nonprofit food service, in accordance with 7 CFR part 210, but that receives additional donated food assistance rather than the cash assistance available to it under Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753).

Consignee means an entity (e.g., the distributing or recipient agency, a commercial storage facility, or a processor) that receives a shipment of donated foods from a vendor or Federal storage facility.

Contract value of the donated foods means the price assigned by the Department to a donated food which must reflect the Department's current acquisition price. This may alternatively be referred to as the USDA purchase price.

Contracting agency means the distributing agency, subdistributing agency, or recipient agency which enters into a processing contract.

CSFP means the Commodity Supplemental Food Program.

Department means the United States Department of Agriculture (USDA).

DHHS means the United States Department of Health and Human Services.

Disaster means a Presidentially declared disaster or emergency, in accordance with Section 412 or 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179-5180), in which Federal assistance, including donated food assistance, may be provided to persons in need of such

assistance as a result of the disaster or emergency.

Disaster organization means an organization authorized by FNS or a distributing agency, when appropriate, to provide assistance to survivors of a disaster or a situation of distress.

Distributing agency means a State agency selected by the Governor of the State or the State legislature to distribute donated foods in the State, in accordance with an agreement with FNS, and with the requirements in this part and other Federal regulations, as applicable (e.g., a State agency distributing donated foods in CSFP must comply with requirements in 7 CFR part 247). Indian Tribal Organizations may act as a distributing agency in the distribution of donated foods on, or near, Indian reservations, as provided for in applicable Federal regulations (e.g., 7 CFR part 253 or 254 for FDPIR). A distributing agency may also be referred to as a State distributing agency.

Distribution charge means the cumulative charge imposed by distributing agencies on school food authorities to help meet the costs of storing and distributing donated foods, and administrative costs related to such activities.

Distributor means a commercial food purveyor or handler who is independent of a processor and charges and bills for the handling of donated foods, and/or sells and bills for the end products delivered to recipient agencies.

Donated foods means foods purchased by USDA for donation in food assistance programs, or for donation to entities assisting eligible persons, in accordance with legislation authorizing such purchase and donation. Donated foods are also referred to as USDA Foods.

Elderly nutrition project means a recipient agency selected by the State Unit on Aging to receive assistance in NSIP, which may include donated food assistance.

Eligible persons means persons in need of food assistance as a result of their:

- (1) Economic status;
- (2) Eligibility for a specific food assistance program; or
- (3) Eligibility as survivors of a disaster or a situation of distress.

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End product means a food product that contains processed donated foods.

Entitlement means the value of donated foods a distributing agency is authorized to receive in a specific program, in accordance with program legislation.

Entitlement foods means donated foods that USDA purchases and provides in accordance with levels of assistance mandated by program legislation.

FDPIR means the Food Distribution Program on Indian Reservations and the Food Distribution Program for Indian Households in Oklahoma.

Federal acceptance service means the acceptance service provided by:

(1) The applicable grading branches of the Department's Agricultural Marketing Service (AMS);

(2) The Department's Federal Grain Inspection Service; and

(3) The National Marine Fisheries Service of the U.S. Department of Commerce.

Fee-for-service means the price by pound or case representing a processor's cost of ingredients (other than donated foods), labor, packaging, overhead, and other costs incurred in the conversion of the donated food into the specified end product.

Fiscal year means the period of 12 months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

FNS means the Food and Nutrition Service of the Department of Agriculture.

Food recall means an action to remove food products from commerce when there is reason to believe the products may be unsafe, adulterated, or mislabeled. The action is taken to protect the public from products that may cause health problems or possible death.

Food service management company means a commercial enterprise, non-profit organization, or public institution that is, or may be, contracted with by a recipient agency to manage any aspect of a recipient agency's food service, in accordance with 7 CFR part 210, 225, or 226, or, with respect to charitable institutions, in accordance with this part. To the extent that such management includes the use of donated foods, the food service management

company is subject to the applicable requirements in this part. However, a school food authority participating in NSLP that performs such functions is not considered a food service management company. Also, a commercial enterprise that uses donated foods to prepare meals at a commercial facility, or to perform other activities that meet the definition of processing in this section, is considered a processor in this part, and is subject to the requirements in subpart C, and not subpart D, of this part.

Household means any of the following individuals or groups of individuals, exclusive of boarders or residents of an institution:

(1) An individual living alone;

(2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;

(3) A group of individuals living together who customarily purchase and prepare meals in common for home consumption; and

(4) Other individuals or groups of individuals, as provided in FNS regulations specific to particular food assistance programs.

Household programs means CSFP, FDPIR, and TEFAP.

In-kind replacement means the replacement of a loss of donated food with the same type of food of U.S. origin, of equal or better quality as the donated food, and at least equal in value to the lost donated food.

In-State processor means a processor that has entered into agreements with distributing or recipient agencies that are located only in the State in which all of the processor's processing facilities are located.

Multi-food shipment means a shipment from a Federal storage facility that usually includes more than one type of donated food.

Multi-State processor means a processor that has entered into agreements with distributing or recipient agencies in more than one State, or that has entered into one or more agreements with distributing or recipient agencies that are located in a State other than the State in which the processor's processing facilities or business office is located.

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National per-meal value means the value of donated foods provided for each reimbursable lunch served in NSLP in the previous school year, and for each reimbursable lunch and supper served in CACFP in the previous school year, as established in sections 6(c) and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act ((42 U.S.C. 1755(c) and 1766(h)(1)(B))).

Nonprofit organization means a private organization with tax-exempt status under the Internal Revenue Code. Nonprofit organizations operated exclusively for religious purposes are automatically tax-exempt under the Internal Revenue Code.

Nonprofit school food service means all food service operations conducted by the school food authority principally for the benefit of schoolchildren, all of the revenue from which is used solely for the operation or improvement of such food services.

NSIP means the Nutrition Services Incentive Program administered by the DHHS ACL.

NSLP means the National School Lunch Program.

Out-of-condition donated foods means donated foods that are no longer fit for human consumption as a result of spoilage, contamination, infestation, adulteration, or damage.

Performance supply and surety bond means a written instrument issued by a surety company which guarantees performance and supply of end products by a processor under the terms of a processing contract.

Processing means a commercial enterprise's use of a commercial facility to:

- (1) Convert donated foods into an end product;
- (2) Repackage donated foods; or
- (3) Use donated foods in the preparation of meals.

Processor means a commercial enterprise that processes donated foods at a commercial facility.

Recipient agencies means agencies or organizations that receive donated foods for distribution to eligible persons or for use in meals provided to eligible persons, in accordance with agreements with a distributing or sub-distributing agency, or with another recipient agency. Local agencies in CSFP, and Indian Tribal Organizations

distributing donated foods to eligible persons through FDPIR in a State in which the State government administers FDPIR, are considered recipient agencies in this part.

Recipients means persons receiving donated foods, or a meal containing donated foods, provided by recipient agencies.

Reimbursable meals means meals that meet the nutritional standards established in Federal regulations pertaining to NSLP, SFSP, or CACFP, and that are served to eligible recipients.

SAE funds means Federal funds provided to State agencies for State administrative expenses, in accordance with 7 CFR part 235.

SBP means the School Breakfast Program.

School food authority means the governing body responsible for the administration of one or more schools, and that has the legal authority to operate NSLP or be otherwise approved by FNS to operate NSLP.

School year means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

Section 4(a) means section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note), which authorizes the Department to purchase donated foods to maintain the traditional level of assistance for food assistance programs authorized by law, including, but not limited to, CSFP, FDPIR, and disaster assistance.

Section 6 means section 6 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755), which authorizes the Department to provide a specified value of donated food assistance in NSLP.

Section 14 means section 14 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a), which authorizes the Department to use Section 32 or Section 416 funds to maintain the annually programmed levels of donated food assistance in child nutrition programs.

Section 27 means section 27 of the Food and Nutrition Act of 2008 (7 U.S.C. 2036), which authorizes the purchase of donated foods for distribution in TEFAP.

Section 32 means section 32 of Public Law 74–320 (7 U.S.C. 612c), which authorizes the Department to purchase primarily perishable foods to remove market surpluses, and to donate them for use in domestic food assistance programs or by charitable institutions.

Section 311 means section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a), which permits State Units on Aging to receive all or part of their NSIP grant as USDA donated foods.

Section 416 means section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), which authorizes the Department to purchase nonperishable foods to support market prices, and to donate them for use in domestic food assistance programs or by charitable institutions.

Section 709 means section 709 of the Food and Agricultural Act of 1965 (7 U.S.C. 1446a–1), which authorizes the Department to purchase dairy products to meet authorized levels of assistance in domestic food assistance programs when such assistance cannot be met by Section 416 food purchases.

Service institution means recipient agencies that participate in SFSP.

SFSP means the Summer Food Service Program.

Similar replacement means the replacement of a loss of donated food with another type of food from the same food category (*e.g.*, dairy, grain, meat/meat alternate, vegetable, fruit, etc.) that is of U.S. origin, of equal or better quality than that type of donated food, and at least equal in value to the lost donated food.

Single inventory management means the commingling in storage of donated foods and foods from other sources, and the maintenance of a single inventory record of such commingled foods.

Situation of distress means a natural catastrophe or other event that does not meet the definition of disaster in this section, but that, in the determination of the distributing agency, or of FNS, as applicable, warrants the use of donated foods to assist survivors of such catastrophe or other event. A situation of distress may include, for example, a hurricane, flood, snowstorm, or explosion.

SNAP means the Supplemental Nutrition Assistance Program.

Split shipment means a shipment of donated foods from a vendor that is split between two or more distributing or recipient agencies, and that usually includes more than one stop-off or delivery location.

State means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

State Unit on Aging means:

(1) The State agency that has been approved by DHHS to administer NSIP; or

(2) The Indian Tribal Organization that has been approved by DHHS to administer NSIP.

Storage facility means a publicly-owned or nonprofit facility or a commercial enterprise that stores donated foods or end products, and that may also transport such foods to another location.

Subdistributing agency means a State agency, a public agency, or a nonprofit organization selected by the distributing agency to perform one or more activities required of the distributing agency in this part, in accordance with a written agreement between the parties. A subdistributing agency may also be a recipient agency.

Substitution means:

(1) The replacement of donated foods with like quantities of domestically produced commercial foods of the same generic identity and of equal or better quality.

(2) A processor can substitute commercial product for donated food, as described in paragraph (1) of this definition, without restrictions under full substitution. The processor must return to the contracting agency, in finished end products, the same number of pounds of donated food that the processor originally received for processing under full substitution. This is the 100-percent yield requirement.

(3) A processor can substitute commercial product for donated foods, as described in paragraph (1) of this definition, with some restrictions under limited substitution. Restrictions include, but are not limited to, the prohibition against substituting for backhauled poultry product. FNS may also prohibit substitution of certain

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types of the same generic food. (For example, FNS may decide to permit substitution for bulk chicken but not for canned chicken.)

Summer camp means a nonprofit or public camp for children aged 18 and under.

TEFAP means The Emergency Food Assistance Program.

USDA Foods means donated foods.

USDA implementing regulations mean the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

Vendor means a commercial food company from which the Department purchases foods for donation.

§ 250.3 Administration at the Federal level.

(a) *Food and Nutrition Service.* Within the Department, Food and Nutrition Service (FNS) must act on behalf of the Department to administer the distribution of donated foods to distributing agencies for further distribution and use at the State level, in accordance with the requirements of this part.

(b) *Audits or inspections.* The Department, the Comptroller General of the United States, or any of their authorized representatives, may conduct audits or inspections of distributing, subdistributing, or recipient agencies, or the commercial enterprises with which they have contracts or agreements, in order to determine compliance with the requirements of this part, or with other applicable Federal regulations.

(c) *Suspension or termination.* Whenever it is determined that a distributing agency has materially failed to comply with the provisions of this part, or with other applicable Federal regulations, FNS may suspend or terminate the distribution of donated foods, or the provision of administrative funds, to the distributing agency. FNS must provide written notification of such suspension or termination of assistance, including the reasons for

the action and the effective date. The distributing agency may appeal a suspension or termination of assistance if such appeal is provided for in Federal regulations applicable to a specific food assistance program (e.g., as provided for in § 253.5(1) of this chapter for FDPIR). FNS may also take other actions, as appropriate, including prosecution under applicable Federal statutes.

§ 250.4 Administration at the State level.

(a) *Distributing agency.* The distributing agency, as defined in § 250.2, is responsible for ensuring compliance with the requirements in this part, and in other Federal regulations referenced in this part, in the distribution and control of donated foods. In order to receive, store, and distribute donated foods, the distributing agency must enter into a written agreement with FNS (the *Federal-State Agreement*, form FNS-74) for the distribution of donated foods in accordance with the provisions of this part and other applicable Federal regulations. The Federal-State agreement is permanent, but may be amended with the concurrence of both parties. FNS may terminate the Federal-State agreement if the distributing agency fails to meet its obligations, in accordance with § 250.3(c). Each distributing agency must also provide adequate personnel to administer the program in accordance with this part. The distributing agency may impose additional requirements related to the distribution and control of donated foods in the State, as long as such requirements are not inconsistent with the requirements in this part or other Federal regulations referenced in this part.

(b) *Subdistributing agency.* The distributing agency may enter into a written agreement with a subdistributing agency, as defined in § 250.2, to perform specific activities required of the distributing agency in this part. However, the distributing agency may not assign its overall responsibility for donated food distribution and control to a subdistributing agency or to any other organization, and may not delegate its responsibility to ensure compliance with the performance standards

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and receipt in accordance with paragraph (c) of this section.

(c) *Agreements*—(1) *Agreements between Department and States*. Each State agency that distributes donated foods to eligible recipient agencies or receives payments for storage and distribution costs in accordance with § 251.8 must perform those functions pursuant to an agreement entered into with the Department. This agreement will be considered permanent, with amendments initiated by State agencies, or submitted by them at the Department's request, all of which will be subject to approval by the Department.

(2) *Agreements between State agencies and eligible recipient agencies, and between eligible recipient agencies*. Prior to making donated foods or administrative funds available, State agencies must enter into a written agreement with eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds. State agencies must ensure that eligible recipient agencies in turn enter into a written agreement with any eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds before donated foods or administrative funds are transferred between any two eligible recipient agencies. All agreements entered into must contain the information specified in paragraph (d) of this section, and be considered permanent, with amendments to be made as necessary, except that agreements must specify that they may be terminated by either party upon 30 days' written notice. State agencies must ensure that eligible recipient agencies provide, on a timely basis, by amendment to the agreement, or other written documents incorporated into the agreement by reference if permitted under paragraph (d) of this section, any information on changes in program administration, including any changes resulting from amendments to Federal regulations or policy.

(d) *Contents of agreements between State agencies and eligible recipient agencies and between eligible recipient agencies*. (1) Agreements between State agencies and eligible recipient agencies and between eligible recipient agencies must provide:

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(i) That eligible recipient agencies agree to operate the program in accordance with the requirements of this part, and, as applicable, part 250 of this chapter; and

(ii) The name and address of the eligible recipient agency receiving commodities and/or administrative funds under the agreement.

(2) The following information must also be identified, either in the agreement or other written documents incorporated by reference in the agreement:

(i) If the State agency delegates the responsibility for any aspect of the program to an eligible recipient agency, each function for which the eligible recipient agency will be held responsible; except that in no case may State agencies delegate responsibility for establishing eligibility criteria for organizations in accordance with § 251.5(a), establishing eligibility criteria for recipients in accordance with § 251.5(b), or conducting reviews of eligible recipient agencies in accordance with § 251.10(e);

(ii) If the receiving eligible recipient agency is to be allowed to further distribute TEFAP commodities and/or administrative funds to other eligible recipient agencies, the specific terms and conditions for doing so, including, if applicable, a list of specific organizations or types of organizations eligible to receive commodities or administrative funds;

(iii) If the use of administrative funds is restricted to certain types of expenses pursuant to § 251.8(e)(2), the specific types of administrative expenses eligible recipient agencies are permitted to incur;

(iv) Any other conditions set forth by the State agency.

[51 FR 12823, Apr. 16, 1986, as amended at 52 FR 17933, May 13, 1987; 59 FR 16974, Apr. 11, 1994; 62 FR 53731, Oct. 16, 1997; 64 FR 72902, 72903, Dec. 29, 1999]

§ 251.3 Definitions.

(a) The terms used in this part that are defined in part 250 of this chapter have the meanings ascribed to them therein, unless a different meaning for such a term is defined herein.

(b) *Charitable institution* (which is defined differently in this part than in

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part 250 of this chapter) means an organization which—

- (1) Is public, or
- (2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and
- (3) Is not a penal institution (this exclusion also applies to correctional institutions which conduct rehabilitation programs); and
- (4) Provides food assistance to needy persons.

(c) *Distribution site* means a location where the eligible recipient agency actually distributes commodities to needy persons for household consumption or serves prepared meals to needy persons under this part.

(d) *Eligible recipient agency* means an organization which—

- (1) Is public, or
- (2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and
- (3) Is not a penal institution; and
- (4) Provides food assistance—
 - (i) Exclusively to needy persons for household consumption, pursuant to a means test established pursuant to § 251.5 (b), or
 - (ii) Predominantly to needy persons in the form of prepared meals pursuant to § 251.5(a)(2); and
- (5) Has entered into an agreement with the designated State agency pursuant to § 251.2(c) for the receipt of commodities or administrative funds, or receives commodities or administrative funds under an agreement with another eligible recipient agency which has signed such an agreement with the State agency or another eligible recipient agency within the State pursuant to § 251.2(c); and

(6) Falls into one of the following categories:

- (i) Emergency feeding organizations (including food banks, food pantries and soup kitchens);
- (ii) Charitable institutions (including hospitals and retirement homes);
- (iii) Summer camps for children, or child nutrition programs providing food service;
- (iv) Nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate congregate Nutrition sites and projects that provide home-delivered meals; and
- (v) Disaster relief programs.

(e) *Emergency feeding organization* means an eligible recipient agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. Emergency feeding organizations have priority over other eligible recipient agencies in the distribution of TEFAP commodities pursuant to § 251.4(h).

(f) *Food bank* means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

(g) *Food pantry* means a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress.

(h) *Formula* means the formula used by the Department to allocate among States the commodities and funding available under this part. The amount of such commodities and funds to be provided to each State will be based on each State's population of low-income and unemployed persons, as compared to national statistics. Each State's share of commodities and funds shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The surplus commodities will be allocated to States on the basis of their weight (pounds), and the commodities purchased under section 214 of the Emergency Food Assistance Act of 1983 will be allocated on the basis of their value (dollars). In instances in which a State determines that it will not accept the full amount of its allocation of commodities purchased under section 214 of the Emergency Food Assistance Act of 1983, the Department will reallocate the commodities to other States on the basis of the same formula used for the initial allocation.

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(i) *State agency* means the State government unit designated by the Governor or other appropriate State executive authority which has entered into an agreement with the United States Department of Agriculture under § 251.2(c).

(j) *Soup kitchen* means a public or charitable institution that, as an integral part of the normal activities of the institution, maintains an established feeding operation to provide food to needy homeless persons on a regular basis.

(k) *Value of commodities distributed* means the Department's cost of acquiring commodities for distribution under this part.

[64 FR 72903, Dec. 29, 1999]

§ 251.4 Availability of commodities.

(a) *General.* The Department shall make commodities available for distribution and use in accordance with the provisions of this part and also in accordance with the terms and conditions of part 250 of this chapter to the extent that the part 250 terms and conditions are not inconsistent with this part.

(b) *Displacement.* State agencies shall require that eligible recipient agencies receiving commodities under this part shall not diminish their normal expenditures for food because of receipt of commodities. Additionally, the Secretary shall withhold commodities from distribution if it is determined that the commodities would substitute for the same or a similar product that would otherwise be purchased in the market.

(c) *Allocations.* (1) Allocations of commodities shall be made to State agencies on the basis of the formula defined in § 251.3(h).

(2) FNS shall promptly notify State agencies regarding their allocation of commodities to be made available under this part.

(3) State agencies shall notify the appropriate FNSRO of the amount of the commodities they will accept not later than 30 days prior to the beginning of the shipping period.

(4) FNS will make allocations of donated commodity or food funding available to State agencies for two fiscal years. States will be allowed to

carry over unexpended balances of donated food funding from one fiscal year into the next fiscal year.

(5) A State's donated food funding allocation remaining at the end of the fiscal year after the fiscal year in which it was initially appropriated will expire and will be unavailable to the State.

(d) *Quantities requested.* State agencies shall:

(1) Request commodities only in quantities which can be utilized without waste in providing food assistance to needy persons under this part;

(2) Ensure that no eligible recipient agency receives commodities in excess of anticipated use, based on inventory records and controls, or in excess of its ability to accept and store such commodities; and

(e) *Initial processing and packaging.* The Department will furnish commodities to be distributed to institutions and to needy persons in households in forms and units suitable for institutional and home use.

(f) *Bulk processing by States.* Commodities may be made available to a State agency or, at the direction of the State agency, directly to private companies for processing bulk commodities for use by eligible recipient agencies.

(1) The Department will reimburse the State agency at the current flat rate for such processing.

(2) Minimum yields and product specifications established by the Department shall be met by the processor.

(3) The State shall require the processor to meet State and local health standards.

(4) Processors and State agencies shall also meet the basic minimum requirements of § 250.30.

(g) *Distribution and control of donated commodities.* The State agency must ensure that the distribution, control, and use of donated commodities are in accordance with the requirements in this part, and with the requirements in 7 CFR part 250, to the extent that requirements in 7 CFR part 250 are not inconsistent with the requirements in this part. Transfers of donated commodities must comply with requirements in §§ 250.12(e) and 250.14(d), as applicable. In accordance with § 250.16,

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markets in which donated food may be utilized. It is expected that the processors will use their marketing abilities to encourage eligible recipient agencies to participate in the program. Additionally, recipient agencies will benefit by being able to purchase processed end products at a substantially reduced price.

(b) *Scope.* The terms and conditions set forth in this part are those under which processors may enter into agreements with FNS for the processing of commodities designated by the Secretary of Agriculture and the minimum requirements which NCP processors must meet. Also prescribed are distributing agency and recipient agency responsibilities.

(c) *Eligible recipient agencies.* Recipient agencies shall be eligible to participate in the NCP Program to the extent of their eligibility to receive the food involved in the NCP Program, pursuant to § 250.8 and part 251.

§ 252.2 Definitions.

The terms used in this part that are defined in §§ 250.3 and 251.3 shall have the meanings ascribed to them therein, except as set forth in this section.

Agreement value of the donated commodity means the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

Distributing agencies means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated food to eligible recipient agencies and recipients; and FNS when it accepts title to commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies under the National Commodity Processing Program. A recipient agency may also be a distributing agency.

Donated food value return system means a system used by a processor or distributor to reduce the price of the end product by the agreement value of the donated commodity.

NCP Program means a program under which FNS and private processors of food may enter into agreements under which the processor will process and

distribute designated donated food to eligible recipient agencies.

Recipient agency means disaster organizations, charitable institutions, non-profit summer camps for children, school food service authorities, schools, service institutions, welfare agencies, nutrition programs for the elderly, nonresidential child care institutions and emergency feeding organizations.

Refund means (1) a credit or check issued to a distributor in an amount equal to the NCP contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price or (2) a check issued to a recipient agency in an amount equal to the NCP contract value of donated foods contained in an end product sold to the recipient agency under a refund system.

Substitution means (1) the replacement of donated food with like quantities of domestically produced commercial food of the same generic identity and of equal or better quality (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.); or (2) in the case of donated nonfat dry milk, substitution as defined under (1) of this paragraph or replacement with an equivalent amount, based on milk solids content, of domestically produced concentrated skim milk.

[51 FR 23518, June 30, 1986, as amended at 52 FR 24977, July 2, 1987; 53 FR 34014, Sept. 2, 1988]

§ 252.3 Administration.

(a) *Role of FNS.* The Secretary will designate those commodities which will be available under the NCP Program. Only commodities made available without charge or credit under any nutrition program administered by USDA will be available under NCP. FNS will act as the distributing agency and the contracting agency under the NCP Program. The Department will pay costs for delivering donated commodities to participating NCP Program processors.

(b) *Food orders.* When NCP Program processors request donated food, FNS will determine whether the quantities ordered are consistent with the processor's ability to sell end products and/or the processor's past demonstrated