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are conducted in a school having classes of primary or higher grade; (2) with the exception of 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, any public or nonprofit private child care institution, or distinct part of such institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term ''child care institutions'' includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, 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; and (3) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

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 nonprofit lunch program therein.

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

Secretary means the Secretary of Agriculture.

Service institutions means camps or sponsors (as those terms are defined in part 225 of this chapter) which participate in the Summer Food Service Program for Children.

Special needs children means children who are emotionally, mentally or physically handicapped.

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, or the Commonwealth of the Northern Mariana Islands.

State agency means the State educational agency or 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, in the State, the National School Lunch Program, the Child Care Food Program, the Summer Food Service Program for Children, or nonprofit lunch programs in commodity schools.

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.

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

Tuition means any educational expense required by the school as part of the students' educational program; not including transportation fees for commuting to and from school, and the cost of room and board. The following monies shall not be included when calculating a school's average yearly tuition per child:

(1) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and (2) state, county or local funds provided to schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible. In a school which varies tuition, the average yearly tuition shall be calculated by dividing the total tuition receipts for the current school year by the total number of students enrolled for purposes of determining if the average yearly tuition exceeds $1,500 per child.

§240.3 Cash in lieu of donated foods for program schools.

(a) Not later than June 1 of each school year, FCS shall make an estimate of the value of agricultural commodities and other foods that will be delivered to States during the school

year under the food distribution regulations (7 CFR part 250) for use in program schools. If the estimated value is less than the total value of assistance authorized under section 6(e) of the Act for the National School Lunch Program, FCS shall determine the difference between the value of the foods then programmed for each State for the school year and the required value and shall pay the difference to each State agency not later than July 1 of that school year.

(b) Notwithstanding any other provision of this section, in any State in which FCS administers the National School Lunch Program in any of the schools of the State, FCS shall withhold from the funds payable to that State under this section an amount equal to the ratio of the number of lunches served in schools in which the program is administered by FCS to the total number of lunches served in all program schools in the State.

[47 FR 15982, Apr. 13, 1982, as amended at 52 FR 7267, Mar. 10, 1987; 58 FR 39120, July 22, 1993]

§ 240.4 Cash in lieu of donated foods for nonresidential child and adult care institutions.

(a) For each school year any State agency may, upon application to FCS prior to the beginning of the school year, elect to receive cash in lieu of donated foods for use in nonresidential child care or adult care institutions participating in the Child and Adult Care Food Program. FCS shall pay each State agency making such election, at a minimum, an amount calculated by multiplying the number of lunches and suppers served in the State's nonresidential child and adult care institutions which meet the meal pattern requirements prescribed in the regulations for the Child and Adult Care Food Program under part 226 of this chapter by the national average value of donated food prescribed in section 6(e)(1) of the Act. However, if a State agency has elected to receive a combination of donated foods and cash, the required amount shall be reduced based upon the number of such lunches and suppers served for which the State receives donated foods.

(b) Notwithstanding any other provision of this section in any State in which FCS administers the Child Care Food Program in any nonresidential child care institution, FCS shall withhold from the funds payable to such State under this section an amount equal to the ratio of the number of lunches and suppers served in such institutions in which the program is administered by the FCS and for which cash payments are provided to the total number of lunches and suppers served in that program and for which cash in lieu of payments are received, in all nonresidential child care institutions in the State.

[47 FR 15982, Apr. 13, 1982, as amended at 58 FR 39120, July 22, 1993]

§ 240.5 Cash in lieu of donated foods for commodity schools.

(a) The school food authority of a commodity school may elect (1) to receive cash payments in lieu of up to five cents per lunch of the value specified in § 250.4(b)(2)(ii) of this chapter to be used for donated-food processing and handling expenses, or (2) to have such payments retained for use on its behalf by the State agency. The school food authority shall consult with commodity schools before making the election.

(b) When a school food authority makes an election regarding receipt of cash payments and the amount of any payments to be received under this paragraph, such election shall be binding on the school food authority for the school year to which the election applies.

(c) The State agency shall (1) no later than May 14, 1982 for the school year ending June 30, 1982, and no later than August 15 of each subsequent school year, contact all school food authorities of commodity schools to learn their election regarding cash payments under this section and the amount of any such payments, and (2) forward this information to the distributing agency and FCSRO, in accordance with § 210.14(d)(2) of this chapter.

§ 240.6 Funds for States which have phased out facilities.

Notwithstanding any other provision of this part, any State which phased out its food distribution facilities prior