

## Food and Nutrition Service, USDA

## § 240.4

*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, FNS 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, FNS 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 FNS administers the National School Lunch Program in any of the schools of the State, FNS 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 FNS 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 FNS 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. FNS 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

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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 FNS administers the Child Care Food Program in any nonresidential child care institution, FNS 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 FNS 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

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agency and FNSRO, 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 to June 30, 1974, may, for purposes of the National School Lunch Program, the Summer Food Service Program for Children, and the Child Care Food Program, elect to receive cash payments in lieu of donated foods. Where such an election is made, FNS shall make cash payments to such State in an amount equivalent in value to the donated foods (or cash in lieu thereof) to which the State would otherwise have been entitled under section 6(e) of the Act, if it had retained its food distribution facilities, except that the amount may be based on the number of meals served in the current school year, rather than on the number of meals served in the preceding school year with a subsequent reconciliation.

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

### § 240.7 Payments to States.

(a) Funds to be paid to any State agency under § 240.3 of this part for disbursement to program schools shall be made available by means of United States Treasury Department checks. The State agency shall use the funds received without delay for the purpose for which issued.

(b) Funds to be paid to any State agency under § 240.4(a) for disbursement to nonresidential child care institutions and funds to be paid to any State agency under § 240.6 for disbursement to program schools, service institutions, or nonresidential child care institutions shall be made available by means of Letters of Credit issued by FNS in favor of the State agency. The State agency shall:

(1) Obtain funds needed to pay school food authorities, nonresidential child care institutions, and service institutions, as applicable through presentation by designated State Officials of a Payment Voucher on Letter of Credit (Treasury Form GFO 7578) in accordance with procedures prescribed by