

## Food and Nutrition Service, USDA

## § 226.5

(2) The rates for meals, including snacks, served in child care centers, emergency shelters, at-risk afterschool care centers, adult day care centers and outside-school-hours care centers will be adjusted annually, on July 1, on the basis of changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustment must be rounded to the nearest lower cent, based on changes measured over the most recent twelve-month period for which data are available. The adjustment to the rates must be computed using the unrounded rate in effect for the preceding year.

(3) The rate for administrative payments to day care home sponsoring organizations shall be adjusted annually, on July 1, on the basis of changes in the series for all items of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be made to the nearest dollar based on changes measured over the most recent twelve-month period for which data are available.

(j) *Audit funds.* For the expense of conducting audits and reviews under § 226.8, funds shall be made available to each State agency in an amount equal to one and one-half percent of the Program reimbursement provided to institutions within the State during the second fiscal year preceding the fiscal year for which these funds are to be made available. The amount of assistance provided to a State under this paragraph in any fiscal year may not exceed the State's expenditures under § 226.8 during such fiscal year.

(k) *Method of funding.* FNS shall authorize funds for State agencies in accordance with 7 CFR part 3016.

(l) *Special developmental projects.* The State agency may use in carrying out special developmental projects an amount not to exceed one percent of Program funds used in the second prior fiscal year. Special developmental

projects shall conform to FNS guidance and be approved in writing by FNS.

[47 FR 36527, Aug. 20, 1982, as amended at 52 FR 36906, Oct. 2, 1987; 53 FR 52588, Dec. 28, 1988; 62 FR 902, Jan. 7, 1997; 63 FR 9728, Feb. 26, 1998; 69 FR 53536, Sept. 1, 2004; 71 FR 4, Jan. 3, 2006; 71 FR 39518, July 13, 2006; 72 FR 41603, 41604, July 31, 2007; 75 FR 16327, Apr. 1, 2010; 76 FR 34569, June 13, 2011]

EDITORIAL NOTE: At 75 FR 16327, Apr. 1, 2010, § 226.4 was amended in paragraph (d) by inserting "Richard B. Russell" before "National School Lunch Program" in the first sentence; however, the amendment could not be incorporated due to inaccurate amendatory instruction.

### § 226.5 Donation of commodities.

(a) USDA foods available under section 6 of this Act, section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) or purchased under section 32 of the Act of August 24, 1935 (7 U.S.C. 1431), section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1), or other authority, and donated by the Department shall be made available to each State.

(b) The value of such commodities donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of reimbursable lunches and suppers served in participating institutions in that State during the preceding school year by the rate for commodities established under section 6(e) of the Act for the current school year. Adjustments shall be made at the end of each school year to reflect the difference between the number of reimbursable lunches and suppers served during the preceding year and the number served during the current year, and subsequent commodity entitlement shall be based on the adjusted meal counts. At the discretion of FNS, current-year adjustments may be made for significant variations in the number of reimbursable meals served. Such current-year adjustments will not be routine and will only be made for unusual problems encountered in a State, such as a disaster that necessitates institutional closures for a prolonged period of time. CACFP State agencies electing to receive cash-in-lieu of commodities will receive payments based on the

number of reimbursable meals actually served during the current school year.

[47 FR 36527, Aug. 20, 1982, as amended at 62 FR 23618, May 1, 1997]

**Subpart C—State Agency Provisions**

**§ 226.6 State agency administrative responsibilities.**

(a) *State agency personnel.* Each State agency must provide sufficient consultative, technical, and managerial personnel to:

- (1) Administer the Program;
- (2) Provide sufficient training and technical assistance to institutions;
- (3) Monitor Program performance;
- (4) Facilitate expansion of the Program in low-income and rural areas; and
- (5) Ensure effective operation of the Program by participating institutions.

(b) *Program applications and agreements.* Each State agency must establish application review procedures, in accordance with paragraphs (b)(1) through (b)(3) of this section, to determine the eligibility of new institutions, renewing institutions, and facilities for which applications are submitted by sponsoring organizations. The State agency must enter into written agreements with institutions in accordance with paragraph (b)(4) of this section.

(1) *Application procedures for new institutions.* Each State agency must establish application procedures to determine the eligibility of new institutions under this part. At a minimum, such procedures must require that institutions submit information to the State agency in accordance with paragraph (f) of this section. For new private non-profit and proprietary child care institutions, such procedures must also include a pre-approval visit by the State agency to confirm the information in the institution's application and to further assess its ability to manage the Program. The State agency must establish factors, consistent with § 226.16(b)(1), that it will consider in determining whether a new sponsoring organization has sufficient staff to perform required monitoring responsibilities at all of its sponsored facilities. As part of the review of the sponsoring

organization's management plan, the State agency must determine the appropriate level of staffing for each sponsoring organization, consistent with the staffing range of monitors set forth at § 226.16(b)(1) and the factors it has established. The State agency must ensure that each new sponsoring organization applying for participation after July 29, 2002 meets this requirement. In addition, the State agency's application review procedures must ensure that the following information is included in a new institution's application:

(i) *Participant eligibility information.* Centers must submit current information on the number of enrolled participants who are eligible for free, reduced-price and paid meals;

(ii) *Enrollment information.* Sponsoring organizations of day care homes must submit current information on:

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

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

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

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

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

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

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

(iv) *Management plan.* Sponsoring organizations must submit a complete management plan that includes:

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

(B) A list or description of the staff assigned to Program monitoring, in accordance with the requirements set forth at § 226.16(b)(1);

(C) An administrative budget that includes projected CACFP administrative earnings and expenses;