

## Food and Nutrition Service, USDA

## § 240.2

CFR part 225) and the Child Care Food Program.

(h) These regulations prescribe the methods for determination of the amount of payments, the manner of disbursement and the requirements for accountability for funds when these respective statutory authorities require the Department to make cash payments in lieu of donating agricultural commodities and other foods.

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

### § 240.2 Definitions.

For the purpose of this part the term:

*Act* means the National School Lunch Act, as amended.

*Child Care Food Program* means the Program authorized by section 17 of the Act.

*Commodity school* means a school that does not participate in the National School Lunch Program under part 210 of this chapter but which operates a nonprofit lunch program under agreement with the State educational agency or FNSRO and receives donated foods, or donated foods and cash or services of a value of up to 5 cents per lunch in lieu of donated foods under this part for processing and handling the foods.

*Department* means the U.S. Department of Agriculture.

*Distributing agencies* means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated foods to program schools, commodity schools, and nonresidential child care institutions.

*Donated-food processing and handling expenses* means any expenses incurred by or on behalf of a commodity school for processing or other aspects of the preparation, delivery, and storage of donated foods for use in its lunch program.

*Donated foods* means foods donated, or available for donation, by the Department under any of the legislation referred to in part 250 of this chapter.

*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.

*FNSRO* means the appropriate Food and Nutrition Service Regional Office.

*National School Lunch Program* means the Program authorized by sections 4 and 11 of the Act.

*Nonprofit* 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 as nonprofit by its Governor.

*Nonresidential child care institution* means any child care center, day care home, or sponsoring organization (as those terms are defined in part 226 of this chapter) which participates in the Child Care Food Program.

*Program school* means a school which participates in the National School Lunch Program.

*School* means (1) an educational unit of high school grade or under except for a private school with an average yearly tuition exceeding \$1,500 per child, operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes 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

### § 240.3

### 7 CFR Ch. II (1-1-12 Edition)

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, 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