

## Food and Nutrition Service, USDA

## § 225.2

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(National School Lunch Act, secs. 9, 13, 17; 42 U.S.C. 1758, 1761, 1766; 7 CFR 210.10, 220.8, 225.21, 226.20)

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### PART 225—SUMMER FOOD SERVICE PROGRAM

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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.

*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 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 ac-

curate 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

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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 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

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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 rea-

sons 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 (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.

*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.

*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.

*7 CFR part 3015* means the Uniform Federal Assistance Regulations published by the Department to implement certain policies applicable to all Department programs. The applicable provisions deal with competition for discretionary grants and cooperative agreements, costs requiring prior approval, acknowledgement of Department support in publications and audiovisuals produced under Department programs, intergovernmental review of Department programs under Executive Order 12372, and certain miscellaneous Department requirements.

*7 CFR part 3016* means the Department’s Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. 7 CFR part 3016 covers requirements for awards and subawards to State and local governmental organizations under Department programs.

*7 CFR part 3019* means the Department’s Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. 7 CFR part 3019 covers requirements for awards and subawards

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to nongovernmental, nonprofit organizations under Department programs.

7 CFR part 3052 means the Department's regulations implementing OMB Circular A-133. (To obtain the OMB circular referenced in this definition, see 5 CFR 1310.3.)

[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]

#### § 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 administration of the Program in accordance with the provisions of this part. The agreement shall cover the operation of the Program during the period specified therein and may be extended by written consent of both parties. The agreement shall contain an assurance that the State agency will comply with the Department's non-discrimination regulations (7 CFR part 15) issued under title VI of the Civil Rights Act of 1964, and any Instructions issued by FNS pursuant to those regulations, title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973. However, if a State educational agency is not permitted by law to disburse funds to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as the disbursements to public schools within the State by the State educational agency.

(c) *Regional office administered programs.* The Secretary shall not administer the Program in the States, except

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that if a FNSRO has continuously administered the Program in any State since October 1, 1980, FNS shall continue to administer the Program in that State. In States in which FNSRO administers the Program, it shall have all of the responsibilities of a State agency and shall earn State administrative and Program funds as set forth in this part. A State in which FNS administers the Program may, upon request to FNS, assume administration of the Program.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13466, Apr. 10, 1990; 64 FR 72483, Dec. 28, 1999]

#### Subpart B—State Agency Provisions

#### § 225.4 Program management and administration plan.

(a) Not later than February 15 of each year, each State agency shall submit to FNSRO a Program management and administration plan for that fiscal year.

(b) Each plan shall be acted on or approved by March 15 or, if it is submitted late, within 30 calendar days of receipt of the plan. If the plan initially submitted is not approved, the State agency and FNS shall work together to ensure that changes to the plan, in the form of amendments, are submitted so that the plan can be approved within 60 calendar days following the initial submission of the plan. Upon approval of the plan, the State agency shall be notified of the level of State administrative funding which it is assured of receiving under § 225.5(a)(3).

(c) Approval of the Plan by FNS shall be a prerequisite to the withdrawal of Program funds by the State from the Letter of Credit and to the donation by the Department of any commodities for use in the State's Program.

(d) The Plan must include, at a minimum, the following information:

(1) The State's administrative budget for the fiscal year, and the State's plan to comply with any standards prescribed by the Secretary for the use of these funds;

(2) The State's plan for use of Program funds and funds from within the State to the maximum extent practicable to reach needy children;