

## §210.2

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monitoring, and reporting and record-keeping requirements.

[53 FR 29147, Aug. 2, 1988, as amended at 78 FR 39090, June 28, 2013]

### §210.2 Definitions.

For the purpose of this part:

*2 CFR part 200*, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

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

*Afterschool care program* means a program providing organized child care services to enrolled school-age children afterschool hours for the purpose of care and supervision of children. Those programs shall be distinct from any extracurricular programs organized primarily for scholastic, cultural or athletic purposes.

*Applicable credits* shall have the meaning established in 2 CFR part 200 and USDA implementing regulations 2 CFR part 400 and part 415.

*Attendance factor* means a percentage developed no less than once each school year which accounts for the difference between enrollment and attendance. The attendance factor may be developed by the school food authority, subject to State agency approval, or may be developed by the State agency. In the absence of a local or State attendance factor, the school food authority shall use an attendance factor developed by FNS. When taking the attendance factor into consideration, school food authorities shall assume that all children eligible for free and reduced price lunches attend school at the same rate as the general school population.

*Average Daily Participation* means the average number of children, by eligibility category, participating in the Program each operating day. These numbers are obtained by dividing (a) the total number of free lunches

claimed during a reporting period by the number of operating days in the same period; (b) the total number of reduced price lunches claimed during a reporting period by the number of operating days in the same period; and (c) the total number of paid lunches claimed during a reporting period by the number of operating days in the same period.

*Child* means—(a) a student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (a) and (b) of the definition of “School,” including students who are mentally or physically disabled as defined by the State and who are participating in a school program established for the mentally or physically disabled; or (b) a person under 21 chronological years of age who is enrolled in an institution or center as described in paragraph (c) of the definition of “School;” or (c) For purposes of reimbursement for meal supplements served in afterschool care programs, an individual enrolled in an afterschool care program operated by an eligible school who is 12 years of age or under, or in the case of children of migrant workers and children with disabilities, not more than 15 years of age.

*CND* means the Child Nutrition Division of the Food and Nutrition Service of the Department.

*Commodity School Program* means the Program under which participating schools operate a nonprofit lunch program in accordance with this part and receive donated food assistance in lieu of general cash assistance. Schools participating in the Commodity School Program shall also receive special cash and donated food assistance in accordance with §210.4(c).

*Contractor* means a commercial enterprise, public or nonprofit private organization or individual that enters into a contract with a school food authority.

*Cost reimbursable contract* means a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed fee.

*Days* means calendar days unless otherwise specified.

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*Department* means the United States Department of Agriculture.

*Distributing agency* means a State agency which enters into an agreement with the Department for the distribution to schools of donated foods pursuant to part 250 of this chapter.

*Donated foods* means food commodities donated by the Department for use in nonprofit lunch programs.

*Fiscal year* means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

*Fixed fee* means an agreed upon amount that is fixed at the inception of the contract. In a cost reimbursable contract, the fixed fee includes the contractor's direct and indirect administrative costs and profit allocable to the contract.

*Fixed-price contract* means a contract that charges a fixed cost per meal, or a fixed cost for a certain time period. Fixed-price contracts may include an economic price adjustment tied to a standard index.

*FNS* means the Food and Nutrition Service, United States Department of Agriculture.

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

*Food component* means one of the food groups which comprise reimbursable meals. The food components are: Meats/meat alternates, grains, vegetables, fruits, and fluid milk. Meals offered to preschoolers must consist of: Meats/meat alternates, grains, vegetables/fruits, and fluid milk.

*Food item* means a specific food offered within a food component.

*Food service management company* means a commercial enterprise or a nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service.

*Free lunch* means a lunch served under the Program to a child from a household eligible for such benefits under 7 CFR part 245 and for which neither the child nor any member of the household pays or is required to work.

*Local educational agency* means a public board of education or other public or private nonprofit authority legally constituted within a State for either

administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

*Lunch* means a meal service that meets the meal requirements in §210.10 for lunches.

*National School Lunch Program* means the Program under which participating schools operate a nonprofit lunch program in accordance with this part. General and special cash assistance and donated food assistance are made available to schools in accordance with this part.

*Net cash resources* means all monies, as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

*Nonprofit* means, when applied to schools or institutions eligible for the Program, exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

*Nonprofit school food service* means all food service operations conducted by the school food authority principally for the benefit of schoolchildren, all of the revenue from which is used solely

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for the operation or improvement of such food services.

*Nonprofit school food service account* means the restricted account in which all of the revenue from all food service operations conducted by the school food authority principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service. This account shall include, as appropriate, non-Federal funds used to support paid lunches as provided in §210.14(e), and proceeds from nonprogram foods as provided in §210.14(f).

*OIG* means the Office of the Inspector General of the Department.

*Paid lunch* means a lunch served to children who are either not certified for or elect not to receive the free or reduced price benefits offered under part 245 of this chapter. The Department subsidizes each paid lunch with both general cash assistance and donated foods. The prices for paid lunches in a school food authority shall be determined in accordance with §210.14(e).

*Point of Service* means that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced price or paid lunch has been served to an eligible child.

*Program* means the National School Lunch Program and the Commodity School Program.

*Reduced price lunch* means a lunch served under the Program: (a) to a child from a household eligible for such benefits under 7 CFR part 245; (b) for which the price is less than the school food authority designated full price of the lunch and which does not exceed the maximum allowable reduced price specified under 7 CFR part 245; and (c) for which neither the child nor any member of the household is required to work.

*Reimbursement* means Federal cash assistance including advances paid or payable to participating schools for lunches meeting the requirements of §210.10 and served to eligible children.

*Revenue*, when applied to nonprofit school food service, means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not

limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

*School* means: (a) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (b) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; or (c) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* 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. The term "residential child care institutions" includes, but is not limited to: homes for the mentally, emotionally or physically impaired, 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. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more.

*School food authority* means the governing body which is responsible for the administration of one or more schools; and has the legal authority to operate the Program therein *or* be otherwise approved by FNS to operate the Program.

*School nutrition program directors* are those individuals directly responsible for the management of the day-to-day operations of school food service for all participating schools under the jurisdiction of the school food authority.

*School nutrition program managers* are those individuals directly responsible for the management of the day-to-day

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operations of school food service for a participating school(s).

*School nutrition program staff* are those individuals, without managerial responsibilities, involved in day-to-day operations of school food service for a participating school(s).

*School week* means the period of time used to determine compliance with the meal requirements in §210.10. The period shall be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period shall be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school lunches are offered less than three times shall be combined with either the previous or the coming week.

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

*Seamless Summer Option* means the meal service alternative authorized by section 13(a)(8) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1761(a)(8), under which public or nonprofit school food authorities participating in the National School Lunch Program or School Breakfast Program offer meals at no cost to children during the traditional summer vacation periods and, for year-round schools, vacation periods longer than 10 school days.

*Secretary* means the Secretary of Agriculture.

*State* means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and, as applicable, American Samoa and the Commonwealth of the Northern Marianas.

*State agency* means (a) the State educational agency; (b) any other agency of the State which has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools, as specified in §210.3(b); or (c) the FNSRO, where the FNSRO administers the Program as specified in §210.3(c).

*State educational agency* means, as the State legislature may determine, (a)

the chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (b) a board of education controlling the State department of education.

*Student with disabilities* means any child who has a physical or mental impairment as defined in §15b.3 of the Department's nondiscrimination regulations (7 CFR part 15b).

*Tofu* means a soybean-derived food, made by a process in which soybeans are soaked, ground, mixed with water, heated, filtered, coagulated, and formed into cakes. Basic ingredients are whole soybeans, one or more food-grade coagulants (typically a salt or an acid), and water. Tofu products must conform to FNS guidance to count toward the meats/meat alternates component.

*USDA implementing regulations* include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

*Whole grains* means grains that consist of the intact, ground, cracked, or flaked grain seed whose principal anatomical components—the starchy endosperm, germ and bran—are present in the same relative proportions as they exist in the intact grain seed. Whole grain-rich products must conform to FNS guidance to count toward the grains component.

*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 Definition and Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, and 21 CFR 131.206, respectively.

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §210.2, see the List of CFR

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Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

#### §210.3 Administration.

(a) *FNS*. FNS will act on behalf of the Department in the administration of the Program. Within FNS, the CND will be responsible for Program administration.

(b) *States*. Within the States, the responsibility for the administration of the Program in schools, as defined in §210.2, shall be in the State educational agency. If the State educational agency is unable to administer the Program in public or private nonprofit residential child care institutions or nonprofit private schools, then Program administration for such schools may be assumed by FNSRO as provided in paragraph (c) of this section, 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 such schools. Each State agency desiring to administer the Program shall enter into a written agreement with the Department for the administration of the Program in accordance with the applicable requirements of this part; parts 235 and 245 of this chapter; parts 15, 15a, and 15b of this title, and 2 CFR part 200; USDA implementing regulations 2 CFR part 400 and part 415; and FNS instructions.

(c) *FNSRO*. The FNSRO will administer the Program in nonprofit private schools or public or nonprofit private residential child care institutions if the State agency is prohibited by law from disbursing Federal funds paid to such schools. In addition, the FNSRO will continue to administer the Program in those States in which nonprofit private schools or public or nonprofit private residential child care institutions have been under continuous FNS administration since October 1, 1980, unless the administration of the Program in such schools is assumed by the State. The FNSRO will, in each State in which it administers the Program, assume all responsibilities of a State agency as set forth in this part and part 245 of this chapter as appropriate. References in this part to

“State agency” include FNSRO, as applicable, when it is the agency administering the Program.

(d) *School food authorities*. The school food authority shall be responsible for the administration of the Program in schools. State agencies shall ensure that school food authorities administer the Program in accordance with the applicable requirements of this part; part 245 of this chapter; parts 15, 15a, and 15b, and 3016 or 3019, as applicable, of this title and 2 CFR part 200; USDA implementing regulations 2 CFR part 400 and part 415 and FNS instructions.

(e) *Authority to waive statute and regulations*. (1) As authorized under section 12(1) of the Richard B. Russell National School Lunch Act, FNS may waive provisions of such Act or the Child Nutrition Act of 1966, as amended, and the provisions of this part with respect to a State agency or eligible service provider. The provisions of this part required by other statutes may not be waived under this authority. FNS may only approve requests for a waiver that are submitted by a State agency and comply with the requirements at section 12(1)(1) and the limitations at section 12(1)(4), including that FNS may not grant a waiver that increases Federal costs.

(2)(i) A State agency may submit a request for a waiver under paragraph (e)(1) of this section in accordance with section 12(1)(2) and the provisions of this part.

(ii) A State agency may submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver where the State concurs must be submitted to the appropriate FNSRO.

(3)(i) An eligible service provider may submit a request for a waiver under paragraph (e)(1) of this section in accordance with section 12(1) and the provisions of this part. Any waiver request submitted by an eligible service provider must be submitted to the State agency for review. A State agency must act promptly on such a waiver request and must deny or concur with a request submitted by an eligible service provider.