

## Food and Nutrition Service, USDA

## §215.2

respect to the Special Milk Program for Children, under the Child Nutrition Act of 1966, as amended, and sets forth the general requirements for participation in the program. The Act reads in pertinent part as follows:

Section 3(a)(1) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each succeeding fiscal year such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as he may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (A) nonprofit schools of high school grade and under, except as provided in paragraph (2), which do not participate in a meal service program authorized under this Act or the National School Lunch Act, and (B) nonprofit nursery schools, child care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a meal service program authorized under this Act or the National School Lunch Act.

(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under this Act or the National School Lunch Act (42 U.S.C. 1751 *et seq.*).

(3) For the purposes of this section "United States" means the fifty States, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the District of Columbia.

(4) The Secretary shall administer the special milk program provided for by this section to the maximum extent practicable in the same manner as he administered the special milk program provided for by Pub. L. 89-642, as amended, during the fiscal year ending June 30, 1969.

(5) Any school or nonprofit child care institution which does not participate in a meal service program authorized under this Act or the National School Lunch Act shall receive the special milk program upon their request.

(6) Children who qualify for free lunches under guidelines established by the Secretary shall, at the option of the school involved (or of the local educational agency involved in the case of a public school) be eligible for free milk upon their request.

(7) For the fiscal year ending June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions shall not be less than 5 cents per half-pint served to eligible children, and

such minimum rate of reimbursement shall be adjusted on an annual basis each school year to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor.

(8) Such adjustment shall be computed to the nearest one-fourth cent.

(9) Notwithstanding any other provision of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children.

[52 FR 7562, Mar. 12, 1987]

### §215.2 Definitions.

For the purpose of this part, the term:

*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 Child Nutrition Act of 1966.

*Adults* means those persons not included under the definition of children.

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

*Child and Adult Care Food Program* means the program authorized by section 17 of the National School Lunch Act, as amended.

*Child care institution* means any nonprofit nursery school, child care center, settlement house, summer camp, service institution participating in the Summer Food Program for Children pursuant to part 225 of this chapter, institution participating in the Child and Adult Care Food Program pursuant to part 226 of this chapter, or similar nonprofit institution devoted to the care and training of children. The term "child care institution" also includes a

## §215.2

## 7 CFR Ch. II (1-1-23 Edition)

nonprofit agency to which such institution has delegated authority for the operation of a milk program in the institution. It does not include any institution falling within the definition of "School" of this section.

*Child* means

(1) A person under 19 chronological years of age in a Child care institution as defined in this section;

(2) A person under 21 chronological years of age attending a school as defined in paragraphs (3) and (4) of the definition of *School* in this section;

(3) A student of high school grade or under attending school as defined in paragraphs (1) and (2) of the definition of *School* in this section; or

(4) A student who is mentally or physically disabled as determined by the State and who is participating in a school program established for the mentally or physically disabled, of high school grade or under as determined by the State educational agency in paragraphs (1) and (2) of the definition of *School* in this section.

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

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

*Cost of milk* means the net purchase price paid by the school or child care institution to the milk supplier for milk delivered to the school or child care institution. This shall not include any amount paid to the milk supplier for servicing, rental of or installment purchase of milk service equipment.

*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.

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

*Disclosure* means reveal or use individual children's program eligibility information obtained through the free milk 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, micro-

fiche, electronic communication or any other means.

*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.

*Fiscal year* means the period of 12 calendar months beginning October 1, 1977, and each October 1 of any calendar year thereafter and ending September 30 of the following calendar 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.

*FNS* means the Food and Nutrition Service of the U.S. Department of Agriculture.

*FNSRO* means Food and Nutrition Services Regional Offices, of the Food and Nutrition Service of the U.S. Department of Agriculture.

*Free milk* means milk for which neither the child nor any member of his family pays or is required to work in the school or child-care institution or in its food service.

*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

## Food and Nutrition Service, USDA

## §215.2

educational agency is the sole educational agency for all public or private nonprofit schools.

*Medicaid* means the State medical assistance program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*).

*Milk* means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, *milk* shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

*National School Lunch Program* means the program under which general cash-for-food assistance and special cash assistance are made available to schools pursuant to part 210 of this chapter.

*Needy children* means:

(1) Children who attend schools participating in the Program and who meet the School Food Authority's eligibility standards for free milk approved by the State agency, or FNSRO where applicable, under part 245 of this chapter; and

(2) Children who attend child-care institutions participating in the Program and who meet the eligibility standards for free milk approved by the State agency, or FNSRO where applicable, under §215.13a of this part.

*Nonpricing program* means a program which does not sell milk to children. This shall include any such program in which children are normally provided milk, along with food and other services, in a school or child-care institution financed by a tuition, boarding, camping or other fee, or by private donations or endowments.

*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 milk service* means milk service maintained by or on behalf of the school or child-care institution for

the benefit of the children, all of the income from which is used solely for the operation or improvement of such milk service.

*Nonprofit school food service account* means the restricted account in which all of the revenue from the nonprofit milk service maintained for the benefit of children is retained and used only for the operation or improvement of the nonprofit milk service.

*OA* means the Office of Audit of the United States Department of Agriculture.

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

*Pricing program* means a program which sells milk to children. This shall include any such program in which maximum use is made of Program reimbursement payments in lowering, or reducing to "zero," wherever possible, the price per half pint which children would normally pay for milk.

*Program* means the Special Milk Program for Children.

*Reimbursement* means financial assistance paid or payable to participating schools and child care institutions for milk served to eligible children.

*School* means: (1) 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; (2) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; or (3) 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

## §215.3

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 Breakfast Program* means the program authorized by section 4 of the Child Nutrition Act of 1966, as amended.

*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 milk program therein. The term "School Food Authority" also includes a nonprofit agency to which such governing body has delegated authority for the operation of a milk program in a school.

*School year* means the period of 12 calendar months beginning July 1, 1977, and each July 1 of any calendar year thereafter and ending June 30 of the following calendar year.

*Split-session* means an educational program operating for approximately one-half of the normal school day.

*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 the State educational agency or any other State agency that 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.

*State Children's Health Insurance Program (CHIP)* means the State medical assistance program under title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*).

*Summer Food Service Program for Children* means the program authorized by section 13 of the National School Lunch Act, as amended.

*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

## 7 CFR Ch. II (1-1-23 Edition)

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.

(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766; sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760; sec. 10(d)), Pub. L. 95-627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626; sec. 205, Pub. L. 96-499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1772, 1784, 1760))

[32 FR 12587, Aug. 31, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §215.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### §215.3 Administration.

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

(b) Within the States, to the extent practicable and permissible under State law, responsibility for the administration of the Program in schools and child care institutions shall be in the educational agency of the State: *Provided, however*, That another State agency, upon request by the Governor or other appropriate State executive or legislative authority, may be approved to administer the Program in schools as described in paragraph (3) of the definition of *School* in §215.2 or in child care institutions.

(c) FNSRO shall administer the Program in any *School* or any *Child care institution* as defined in §215.2 wherein the State agency is not permitted by law to disburse Federal funds paid to it under the Program; *Provided, however*, That FNSRO shall also administer the Program in all other schools and child-care institutions which have been under continuous FNS administration since October 1, 1980 unless the administration of such schools and institutions is assumed by a State agency. References in this part to "FNSRO where applicable" are to FNSRO as the agency administering the Program to