

Food and Nutrition Service, USDA

§ 210.16

§ 210.15 Reporting and recordkeeping.

(a) *Reporting summary.* Participating school food authorities are required to submit forms and reports to the State agency or the distributing agency, as appropriate, to demonstrate compliance with Program requirements. These reports include, but are not limited to:

(1) A Claim for Reimbursement and, for the month of October and as otherwise specified by the State agency, supporting data as specified in accordance with § 210.8 of this part;

(2) An application and agreement for Program operations between the school food authority and the State agency, and a Free and Reduced Price Policy Statement as required under § 210.9;

(3) A written response to reviews pertaining to corrective action taken for Program deficiencies;

(4) A commodity school's preference whether to receive part of its donated food allocation in cash for processing and handling of donated foods as required under § 210.19(b);

(5) A written response to audit findings pertaining to the school food authority's operation as required under § 210.22;

(6) Information on civil rights complaints, if any, and their resolution as required under § 210.23;

(7) The number of food safety inspections obtained per school year by each school under its jurisdiction;

(8) The prices of paid lunches charged by the school food authority; and

(9) For any local educational agency required to conduct a second review of free and reduced price applications as required under § 245.11 of this chapter, the number of free and reduced price applications subject to a second review, the number and percentage of reviewed applications for which the eligibility determination was changed, and a summary of the types of changes made.

(b) *Recordkeeping summary.* In order to participate in the Program, a school food authority or a school, as applicable, must maintain records to demonstrate compliance with Program requirements. These records include but are not limited to:

(1) Documentation of participation data by school in support of the Claim for Reimbursement and data used in

the claims review process, as required under § 210.8(a), (b), and (c) of this part;

(2) Production and menu records as required under § 210.10 and documentation to support performance-based cash assistance, as required under § 210.7(d)(2).

(3) Participation records to demonstrate positive action toward providing one lunch per child per day as required under § 210.10(a)(2), whichever is applicable;

(4) Currently approved and denied certification documentation for free and reduced price lunches and a description of the verification activities, including verified applications, and any accompanying source documentation in accordance with 7 CFR 245.6a of this Title; and

(5) Records from the food safety program for a period of six months following a month's temperature records to demonstrate compliance with § 210.13(c), and records from the most recent food safety inspection to demonstrate compliance with § 210.13(b);

(6) Records to document compliance with the requirements in § 210.14(e);

(7) Records to document compliance with the requirements in § 210.14(f); and

(8) Records for a three year period to demonstrate the school food authority's compliance with the professional standards for school nutrition program directors, managers and personnel established in § 210.30.

(9) Records to document compliance with the local school wellness policy requirements as set forth in § 210.30(f).

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12582, Mar. 28, 1989; 56 FR 32941, July 17, 1991; 60 FR 31215, June 13, 1995; 65 FR 26912, 26922, May 9, 2000; 70 FR 34630, June 15, 2005; 74 FR 66216, Dec. 15, 2009; 76 FR 35317, June 17, 2011; 77 FR 25035, Apr. 27, 2012; 79 FR 7053, Feb. 6, 2014; 80 FR 11092, Mar. 2, 2015; 81 FR 50169, July 29, 2016; 81 FR 50185, July 29, 2016]

§ 210.16 Food service management companies.

(a) *General.* Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or school food authority may contract with a food service management company to

§ 220.4

§ 220.4 Payment of funds to States and FNSROs.

(a) To the extent funds are available, the Secretary shall make breakfast assistance payments to each State agency for breakfasts served to children under the Program. Subject to § 220.13(b)(2), the total of these payments for each State for any fiscal year shall be limited to the total amount of reimbursement payable to eligible schools within the State under this part for the fiscal year.

(b) The Secretary shall prescribe by July 1 of each fiscal year annual adjustments to the nearest one-fourth cent in the national average per breakfast factors for all breakfasts and for free and reduced price breakfasts, that shall reflect changes in the cost of operating a breakfast program.

(c) In addition to the funds made available under paragraph (a) of this section, funds shall be made available to the State agencies, and FNSROs where applicable, in such amounts as are needed to finance reimbursement rates assigned in accordance with the provisions of § 220.9(c).

(Secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758); Pub. L. 97-370, 96 Stat. 1806)

[38 FR 35554, Dec. 28, 1973, as amended at 40 FR 30923, July 24, 1975; 46 FR 51367, Oct. 20, 1981; 48 FR 20896, May 10, 1983; Amdt. 49, 49 FR 18987, May 4, 1984]

§ 220.5 Method of payment to States.

Funds to be paid to any State for the School Breakfast Program shall be made available by means of Letters of Credit issued by FNS in favor of the State agency. The State agency shall:

(a) Obtain funds needed for reimbursement to School Food Authorities through presentation by designated State officials of a payment Voucher on Letter of Credit in accordance with procedures prescribed by FNS and approved by the U.S. Treasury Department; (b) submit requests for funds only at such times and in such amounts, as will permit prompt payment of claims or authorized advances; and (c) use the funds received from such requests without delay for the purpose for which drawn.

[Amdt. 25, 41 FR 34759, Aug. 17, 1976]

7 CFR Ch. II (1-1-21 Edition)

§ 220.6 Use of funds.

(a) Federal funds made available under the School Breakfast Program shall be used by State agencies, or FNSROs where applicable, to reimburse or make advance payments to School Food Authorities in connection with breakfasts served in accordance with the provisions of this part. However, with the approval of FNS, any State agency, or FNSRO where applicable, may reserve for use in carrying out special developmental projects an amount up to 1 per centum of the funds earned in any fiscal year under the School Breakfast Program. Advance payments to School Food Authorities may be made at such times and in such amounts as are necessary to meet current obligations.

(b) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department, shall—

(1) If such funds, assets, or property are of a value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than 5 years or both; or

(2) If such funds, assets, or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than one year or both.

(c) Whoever receives, conceals, or retains to his use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties provided in paragraph (b) of this section.

(Sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 10(d)(3), Pub. L. 95-627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626)

[40 FR 30923, July 24, 1975, as amended by Amdt. 25, 41 FR 34759, Aug. 17, 1976; Amdt. 28, 44 FR 37899, June 29, 1979; 64 FR 50742, Sept. 20, 1999]

§ 220.7 Requirements for participation.

(a) The School Food Authority shall make written application to the State agency, or FNSRO where applicable, for any school in which it desires to operate the School Breakfast Program, if

Food and Nutrition Service, USDA

§ 220.7

such school did not participate in the Program in the prior fiscal year. The School Food Authority shall also submit for approval, either with the application or at the request of the State agency, or FNSRO where applicable, a free and reduced price policy statement in accordance with part 245 of this chapter. A School Food Authority which simultaneously makes application for the National School Lunch Program and the School Breakfast Program shall submit one free and reduced price policy statement which shall provide that the terms, conditions, and eligibility criteria set forth in such policy statement shall apply to the service of free and reduced price lunches and to the service of free and reduced price breakfasts. If, at the time application is made for the School Breakfast Program, a School Food Authority has an approved free and reduced price policy statement on file with the State agency, or FNSRO where applicable, for the National School Lunch Program, it need only confirm in writing that such approved policy statement will also apply to the operation of its School Breakfast Program. Applications for the School Breakfast Program shall not be approved in the absence of an approved free and reduced price policy statement.

(1) A school which also either participates in the National School Lunch Program or only receives donations of commodities for its nonprofit lunch program under the provisions of part 250 of this chapter (commodity only school) shall apply the same set of eligibility criteria so that children who are eligible for free lunches shall also be eligible for free breakfasts and children who are eligible for reduced price lunches shall also be eligible for reduced price breakfasts.

(2) Schools shall obtain a minimum of two food safety inspections per school year conducted by a State or local governmental agency responsible for food safety inspections. Schools participating in more than one child nutrition program shall only be required to obtain a minimum of two food safety inspections per school year if the food preparation and service for all meal programs take place at the

same facility. Schools shall post in a publicly visible location a report of the most recent inspection conducted, and provide a copy of the inspection report to a member of the public upon request.

(3) The school food authority must implement a food safety program meeting the requirements of §§210.13(c) and 210.15(b)(5) of this chapter at each facility or part of a facility where food is stored, prepared, or served.

(b) Applications shall solicit information in sufficient detail to enable the State agency to determine whether the School Food Authority is eligible to participate in the Program and extent of the need for Program payments.

(c) Within the funds available to them, State agencies, or FNSRO's where applicable, shall approve for participation in the School Breakfast Program any school making application and agreeing to carry out the program in accordance with this part. State agencies, or FNSRO's where applicable, have a positive obligation, however, to extend the benefits of the School Breakfast Program to children attending schools in areas where poor economic conditions exist.

(d)(1) Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and paid reimbursable breakfasts to all eligible children. Any school food authority that employs a food service management company in the operation of its nonprofit school food service shall:

(i) Adhere to the procurement standards specified in §220.16 when contracting with the food service management company;

(ii) Ensure that the food service operation is in conformance with the school food authority's agreement under the Program;

(iii) Monitor the food service operation through periodic on-site visits;

§ 220.7

(iv) Retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals;

(v) Retain signature authority on the State agency-school food authority agreement, free and reduced price policy statement and claims;

(vi) Ensure that all federally donated foods received by the school food authority and made available to the food service management company accrue only to the benefit of the school food authority's nonprofit school food service and are fully utilized therein;

(vii) Maintain applicable health certification and assure that all State and local regulations are being met by a food service management company preparing or serving meals at a school food authority facility;

(viii) Obtain written approval of invitations for bids and requests for proposals before their issuance when required by the State agency. The school food authority must incorporate all State agency required changes to its solicitation documents before issuing those documents; and

(ix) Ensure that the State agency has reviewed and approved the contract terms and the school food authority has incorporated all State agency required changes into the contract or amendment before any contract or amendment to an existing food service management company contract is executed. Any changes made by the school food authority or a food service management company to a State agency pre-approved prototype contract or State agency approved contract term must be approved in writing by the State agency before the contract is executed. When requested, the school food authority must submit all procurement documents, including responses submitted by potential contractors, to the State agency, by the due date established by the State agency.

(2) In addition to adhering to the procurement standards under this part, school food authorities contracting with food service management companies shall ensure that:

(i) The invitation to bid or request for proposal contains a 21-day cycle menu developed in accordance with the

7 CFR Ch. II (1-1-21 Edition)

provisions of § 220.8, to be used as a standard for the purpose of basing bids or estimating average cost per meal. A school food authority with no capability to prepare a cycle menu may, with State agency approval, require that each food service management company include a 21-day cycle menu, developed in accordance with the provisions of § 220.8, with its bid or proposal. The food service management company must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the school food authority; and

(ii) Any invitation to bid or request for proposal indicate that nonperformance subjects the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The school food authority shall indicate these sanctions in accordance with the procurement provisions stated in § 220.16.

(3) Contracts that permit all income and expenses to accrue to the food service management company and "cost-plus-a-percentage-of-cost" and "cost-plus-a-percentage-of-income" contracts are prohibited. Contracts that provide for fixed fees such as those that provide for management fees established on a per meal basis are allowed. Contractual agreements with food service management companies shall include provisions which ensure that the requirements of this section are met. Such agreements shall also include the following requirements:

(i) The food service management company shall maintain such records as the school food authority will need to support its Claim for Reimbursement under this part, and shall, at a minimum, report claim information to the school food authority promptly at the end of each month. Such records shall be made available to the school food authority, upon request, and shall be available for a period of 3 years from the date of the submission of the final Financial Status Report, for inspection and audit by representatives of the State agency, of the Department, and of the Government Accountability Office at any reasonable time and place.

Food and Nutrition Service, USDA

§ 220.7

If audit findings have not been resolved, the records shall be retained beyond the three-year period (as long as required for the resolution of the issues raised by the audit);

(ii) The food service management company shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract; and

(iii) No payment is to be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the school food authority for each food component specified in §220.8, or do not otherwise meet the requirements of the contract. Specifications shall cover items such a grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.

(4) The contract between a school food authority and food service management company shall be of a duration of no longer than 1 year and options for the yearly renewal of the contract shall not exceed 4 additional years. All contracts shall include a termination clause whereby either party may cancel for cause with 60-day notification.

(e) Each school food authority approved to participate in the program shall enter into a written agreement with the State agency or the Department through the FNSRO, as applicable, that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State agency or the FNSRO to suspend or terminate the agreement in accordance with §220.18. If a single State agency administers any combination of the Child Nutrition Programs, that State agency shall provide each SFA with a single agreement with respect to the operation of those programs. Such agreements shall provide that the School Food Authority shall, with respect to participating schools under its jurisdiction:

(1)(i) Maintain a nonprofit school food service;

(ii) In accordance with the financial management system established under §220.13(i) of this part, use all revenues

received by such food service only for the operation or improvement of that food service *Except that*, facilities, equipment, and personnel support with funds provided to a school food authority under this part may be used to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*);

(iii) Revenues received by the nonprofit school food service shall not be used to purchase land or buildings or to construct buildings;

(iv) Limit its net cash resources to an amount that does not exceed three months average expenditure for its nonprofit school food service or such other amount as may be approved by the State agency; and

(v) Observe the limitations on any competitive food service as set forth in §220.12 of this part;

(2) Serve breakfasts which meet the minimum requirements prescribed in §220.8, during a period designated as the breakfast period by the school;

(3) Price the breakfast as a unit;

(4) Supply breakfast without cost or at reduced price to all children who are determined by the School Food Authority to be unable to pay the full price thereof in accordance with the free and reduced price policy statements approved under part 245 of this chapter;

(5) Make no discrimination against any child because of his inability to pay the full price of the breakfasts;

(6) Claim reimbursement at the assigned rates only for breakfasts served in accordance with the agreement;

(7) Submit Claims for Reimbursement in accordance with §220.11 of this part and procedures established by the State agency, or FNSRO where applicable;

(8) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations, and comply with the food safety requirements in paragraph (a)(2) and paragraph (a)(3) of this section;

§ 220.8

7 CFR Ch. II (1–1–21 Edition)

(9) Purchase, in as large quantities as may be efficiently utilized in its non-profit school food service, foods designated as plentiful by the State Agency, or CFPDO, where applicable;

(10) Accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department;

(11) Maintain necessary facilities for storing, preparing, and serving food;

(12) Maintain a financial management system as prescribed by the State agency, or FNSRO where applicable;

(13) Upon request, make all accounts and records pertaining to its nonprofit school food service available to the State agency, to FNS and to OA for audit or review at a reasonable time and place. Such records shall be retained for a period of three years after the end of the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit;

(14) Retain documentation of free or reduced price eligibility as follows:

(i) Maintain files of currently approved and denied free and reduced price applications which must be readily retrievable by school for a period of three years after the end of the fiscal year to which they pertain; or

(ii) Maintain files with the names of children currently approved for free meals through direct certification with the supporting documentation, as specified in §245.6(b)(4) of this chapter, which must be readily retrievable by school. Documentation for direct certification must include information obtained directly from the appropriate State or local agency, or other appropriate individual, as specified by FNS, that:

(A) A child in the *Family*, as defined in §245.2 of this chapter, is receiving benefits from *SNAP*, *FDPIR* or *TANF*, as defined in §245.2 of this chapter; if one child is receiving such benefits, all children in that family are considered to be directly certified;

(B) The child is a homeless child as defined in §245.2 of this chapter;

(C) The child is a runaway child as defined in §245.2 of this chapter;

(D) The child is a migrant child as defined in §245.2 of this chapter;

(E) The child is a Head Start child, as defined in §245.2 of this chapter; or

(F) The child is a foster child as defined in §245.2 of this chapter.

(15) Comply with the requirements of the Department's regulations respecting nondiscrimination (7 CFR part 15).

(f) Nothing contained in this part shall prevent the State Agency from imposing additional requirements for participation in the program which are not inconsistent with the provisions of this part.

(g) *Program evaluations.* Local educational agencies, school food authorities, schools, and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department, related to programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966.

(h) Local educational agencies must comply with the provisions of §210.30 of this chapter regarding the development, implementation, periodic review and update, and public notification of the local school wellness policy.

(44 U.S.C. 3506; sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757); Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-647, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[32 FR 34, Jan. 5, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §220.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 220.8 Meal requirements for breakfasts.

(a) *General requirements.* This section contains the meal requirements applicable to school breakfasts for students in grades K through 12, and for children under the age of 5. In general, school food authorities must ensure that participating schools provide nutritious, well-balanced, and age-appropriate breakfasts to all the children they serve to improve their diet and safeguard their health.

(1) *General nutrition requirements.* School breakfasts offered to children

Food and Nutrition Service, USDA

§ 220.8

age 5 and older must meet, at a minimum, the meal requirements in paragraph (b) of this section. Schools must follow a food-based menu planning approach and produce enough food to offer each child the quantities specified in the meal pattern established in paragraph (c) of this section for each age/grade group served in the school. In addition, school breakfasts must meet the dietary specifications in paragraph (f) of this section. Schools offering breakfasts to children ages 1 to 4 and infants must meet the meal pattern requirements in paragraphs (o) and (p), as applicable, of this section. When breakfast is served in the cafeteria, schools must make potable water available and accessible without restriction to children at no charge.

(2) *Unit pricing.* Schools must price each meal as a unit. The price of a reimbursable lunch does not change if the student does not take a food item or requests smaller portions. Schools must identify, near or at the beginning of the serving line(s), the food items that constitute the unit-priced reimbursable school meal(s).

(3) *Production and menu records.* Schools or school food authorities, as applicable, must keep production and menu records for the meals they produce. These records must show how the meals offered contribute to the required food components and food quantities for each age/grade group every day. Labels or manufacturer specifications for food products and ingredients used to prepare school meals for students in grades K through 12 must indicate zero grams of *trans* fat per serving (less than 0.5 grams). Schools or school food authorities must maintain records of the latest nutritional analysis of the school menus conducted by the State agency. Production and menu records must be maintained in accordance with FNS guidance.

(b) *Meal requirements for school breakfasts.* School breakfasts for children ages 5 and older must reflect food and nutrition requirements specified by the Secretary. Compliance with these requirements is measured as follows:

(1) On a daily basis:

(i) Meals offered to each age/grade group must include the food components and food quantities specified in

the meal pattern in paragraph (c) of this section;

(ii) Food products or ingredients used to prepare meals must contain zero grams of *trans* fat per serving or a minimal amount of naturally occurring *trans* fat as specified in paragraph (f) of this section; and

(iii) Meal selected by each student must have the number of food components required for a reimbursable meal and include at least one fruit or vegetable.

(2) Over a 5-day school week:

(i) Average calorie content of the meals offered to each age/grade group must be within the minimum and maximum calorie levels specified in paragraph (f) of this section;

(ii) Average saturated fat content of the meals offered to each age/grade group must be less than 10 percent of total calories as specified in paragraph (f) of this section;

(iii) Average sodium content of the meals offered to each age/grade group must not exceed the maximum level specified in paragraph (f) of this section;

(c) *Meal pattern for school breakfasts for grades K through 12.* A school must offer the food components and quantities required in the breakfast meal pattern established in the following table:

Food components	Breakfast meal pattern		
	Grades K-5	Grades 6-8	Grades 9-12
	Amount of food ^a per week (minimum per day)		
Fruits (cups) ^{b,c}	5 (1)	5 (1)	5 (1)
Vegetables (cups) ^{b,c}	0	0	0
Dark green	0	0	0
Red/Orange	0	0	0
Beans and peas (legumes)	0	0	0
Starchy	0	0	0
Other	0	0	0
Grains (oz. eq.) ^d	7-10 (1)	8-10 (1)	9-10 (1)
Meats/Meat Alternates (oz. eq.) ^e	0	0	0
Fluid milk (cups) ^f	5 (1)	5 (1)	5 (1)

Other Specifications: Daily Amount Based on the Average for a 5-Day Week

Min-max calories (kcal) ^{g,h}	350-500	400-550	450-600
Saturated fat (% of total calories) ^h	<10	<10	<10
Sodium (mg) ^{h,i}	≤430	≤470	≤500

§ 220.8

7 CFR Ch. II (1–1–21 Edition)

Food components	Breakfast meal pattern		
	Grades K–5	Grades 6–8	Grades 9–12
<i>Trans fat</i> ^h	Nutrition label or manufacturer specifications must indicate zero grams of <i>trans fat</i> per serving.		

^aFood items included in each group and subgroup and amount equivalents. Minimum creditable serving is 1/8 cup.

^bOne quarter cup of dried fruit counts as 1/2 cup of fruit; 1 cup of leafy greens counts as 1/2 cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.

^cSchools must offer 1 cup of fruit daily and 5 cups of fruit weekly. Vegetables may be substituted for fruits, but the first two cups per week of any such substitution must be from the dark green, red/orange, beans and peas (legumes) or “Other vegetables” subgroups, as defined in §210.10(c)(2)(iii) of this chapter.

^dAll grains offered weekly must be whole grain-rich as specified in FNS guidance. Schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met.

^eThere is no meat/meat alternate requirement.

^fAll fluid milk must be low-fat (1 percent fat or less, unflavored) or fat-free (unflavored or flavored).

^gThe average daily calories for a 5-day school week menu must be within the range (at least the minimum and no more than the maximum values).

^hDiscretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans fat*, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat are not allowed.

ⁱFinal sodium targets (shown) must be met no later than July 1, 2022 (SY 2022–2023). The second intermediate target must be met no later than SY 2017–2018. See required intermediate specifications in §220.8(f)(3).

(1) *Age/grade groups.* Schools must plan menus for students using the following age/grade groups: Grades K–5 (ages 5–10), grades 6–8 (ages 11–13), and grades 9–12 (ages 14–18). If an unusual grade configuration in a school prevents the use of the established age/grade groups, students in grades K–5 and grades 6–8 may be offered the same food quantities at breakfast provided that the calorie and sodium standards for each age/grade group are met. No customization of the established age/grade groups is allowed.

(2) *Food components.* Schools must offer students in each age/grade group the food components specified in meal pattern in paragraph (c). Food component descriptions in §210.10 of this chapter apply to this Program.

(i) *Meats/meat alternates component.* Schools are not required to offer meats/meat alternates as part of the breakfast menu. Schools may substitute meats/meat alternates for grains, after the daily grains requirement is met, to meet the weekly grains requirement. One ounce equivalent of meat/meat alternate is equivalent to one ounce equivalent of grains.

(A) *Enriched macaroni.* Enriched macaroni with fortified protein as defined in appendix A to part 210 may be used to meet part of the meats/meat alternates requirement when used as specified in appendix A to part 210. An enriched macaroni product with fortified protein as defined in appendix A to part 210 may be used to meet part of the meats/meat alternates component or the grains component but may not meet both food components in the same lunch.

(B) *Nuts and seeds.* Nuts and seeds and their butters are allowed as meat alternates in accordance with program guidance. Acorns, chestnuts, and coconuts may not be used because of their low protein and iron content. Nut and seed meals or flours may be used only if they meet the requirements for Alternate Protein Products established in appendix A to part 220. Nuts or seeds may be used to meet no more than one-half (50 percent) of the meats/meat alternates component with another meats/meat alternate to meet the full requirement.

(C) *Yogurt.* Yogurt may be used to meet all or part of the meats/meat alternates component. Yogurt may be plain or flavored, unsweetened or sweetened. Noncommercial and/or non-standardized yogurt products, such as frozen yogurt, drinkable yogurt products, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruits and/or nuts or similar products are not creditable. Four ounces (weight) or 1/2 cup (volume) of yogurt equals one ounce of the meats/meat alternates requirement.

(D) *Tofu and soy products.* Commercial tofu and soy products may be used to meet all or part of the meats/meat alternates component in accordance with FNS guidance. Noncommercial and/or non-standardized tofu and products are not creditable.

(E) *Beans and peas (legumes).* Cooked dry beans and peas (legumes) may be used to meet all or part of the meats/meat alternates component. Beans and peas (legumes) are identified in this section and include foods such as black beans, garbanzo beans, lentils, kidney beans, mature lima beans, navy beans, pinto beans, and split peas.

(F) *Other meat alternates.* Other meat alternates, such as cheese and eggs, may be used to meet all or part of the meats/meat alternates component in accordance with FNS guidance.

(ii) *Fruits component.* Schools must offer daily the fruit quantities specified in the breakfast meal pattern in paragraph (c) of this section. Fruits that are fresh; frozen without added sugar; canned in light syrup, water or fruit juice; or dried may be offered to meet the fruits component requirements. Vegetables may be offered in place of all or part of the required fruits at breakfast, but the first two cups per week of any such substitution must be from the dark green, red/orange, beans and peas (legumes) or other vegetable subgroups, as defined in this section. All fruits are credited based on their volume as served, except that $\frac{1}{4}$ cup of dried fruit counts as $\frac{1}{2}$ cup of fruit. Only pasteurized, full-strength fruit juice may be used, and may be credited to meet no more than one-half of the fruit component.

(iii) *Vegetables component.* Schools are not required to offer vegetables as part of the breakfast menu but may offer vegetables to meet part or all of the fruit requirement. Fresh, frozen, or canned vegetables and dry beans and peas (legumes) may be offered to meet the fruit requirement. All vegetables are credited based on their volume as served, except that 1 cup of leafy greens counts as $\frac{1}{2}$ cup of vegetables and tomato paste and tomato puree are credited based on calculated volume of the whole food equivalency. Pasteurized, full-strength vegetable juice may be used to meet no more than one-half of the vegetable component. Cooked dry beans or peas (legumes) may be counted as either a vegetable or as a meat alternate but not as both in the same meal.

(iv) *Grains component.* (A) *Enriched and whole grains.* All grains must be made with enriched and whole grain meal or flour, in accordance with the most recent FNS guidance on grains. The whole grain-rich criteria included in FNS guidance may be updated to reflect additional information provided by industry on the food label or a whole grains definition by the Food and Drug Administration. Whole grain-

rich products must contain at least 50 percent whole grains and the remaining grains in the product must be enriched. Schools may substitute meats/meat alternates for grains, after the daily grains requirement is met, to meet the weekly grains requirement. One ounce equivalent of meat/meat alternate is equivalent to one ounce equivalent of grains.

(B) *Daily and weekly servings.* The grains component is based on minimum daily servings plus total servings over a 5-day school week. Schools serving breakfast 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent ($\frac{1}{5}$) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent ($\frac{1}{5}$) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in FNS guidance. All grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance.

(3) *Food components in outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a vegetable such as yams, plantains, or sweet potatoes to meet the grains component.

(d) *Fluid milk requirement.* Breakfast must include a serving of fluid milk as a beverage or on cereal or used in part for each purpose. Schools must offer students a variety (at least two different options) of fluid milk. All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not allowed. Fat-free fluid milk may be flavored or unflavored, and low-fat fluid milk must be unflavored. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Schools must also comply with other applicable fluid milk requirements in §210.10(d)(1) through (4) of this chapter.

(e) *Offer versus serve for grades K through 12.* School breakfast must offer daily at least the three food components required in the meal pattern in paragraph (c) of this section. To exercise the offer versus serve option at breakfast, a school food authority or school must offer a minimum of four food items daily as part of the required

§ 220.8

7 CFR Ch. II (1–1–21 Edition)

components. Under offer versus serve, students are allowed to decline one of the four food items, provided that students select at least ½ cup of the fruit component for a reimbursable meal. If only three food items are offered at breakfast, school food authorities or

schools may not exercise the offer versus serve option.

(f) *Dietary specifications.* (1) *Calories.* Schools breakfasts offered to each age/grade group must meet, on average over the school week, the minimum and maximum calorie levels specified in the following table:

CALORIE RANGES FOR BREAKFAST—EFFECTIVE SY 2013–2014

	Grades K–5	Grades 6–8	Grades 9–12
Minimum-maximum calories (kcal) ^{a b}	350–500	400–550	450–600

^a The average daily amount for a 5-day school must fall within the minimum and maximum levels.
^b Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans* fat, and sodium.

(2) *Saturated fat.* Schools breakfasts offered to all age/grade groups must, on average over the school week, provide less than 10 percent of total calories from saturated fat.

(3) *Sodium.* School breakfasts offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the following table within the established deadlines:

School breakfast program	Sodium timeline & limits	
	Target 2: July 1, 2017 (SY 2017–2018) (mg)	Final target: July 1, 2022 (SY 2022–2023) (mg)
Age/grade group		
K–5	≤485	≤430
6–8	≤535	≤470
9–12	≤570	≤500

(4) *Trans fat.* Food products and ingredients used to prepare school meals must contain zero grams of *trans* fat (less than 0.5 grams) per serving. Schools must add the *trans* fat specification and request the required documentation (nutrition label or manufacturer specifications) in their procurement contracts. Documentation for food products and food ingredients must indicate zero grams of *trans* fat per serving. Meats that contain a minimal amount of naturally-occurring *trans* fats are allowed in the school meal programs.

(g) *Compliance assistance.* The State agency and school food authority must provide technical assistance and training to assist schools in planning breakfasts that meet the meal pattern in paragraph (c) of this section, the dietary specifications for calorie, saturated fat, sodium, and *trans* fat estab-

lished in paragraph (f) of this section, and the meal pattern in paragraphs (o) and (p) of this section, as applicable. Compliance assistance may be offered during training, onsite visits, and/or administrative reviews.

(h) *State agency responsibilities for monitoring dietary specifications—*(1) *Calories, saturated fat, and sodium.* When required by the administrative review process set forth in §210.18, the State agency must conduct a weighted nutrient analysis to evaluate the average levels of calories, saturated fat, and sodium of the breakfasts offered during one week within the review period. The nutrient analysis must be conducted in accordance with the procedures established in §210.10(i) of this chapter. If the results of the review indicate that the school breakfasts are not meeting the standards for calories, saturated fat, or sodium specified in paragraph (f) of this section, the State agency or school food authority must provide technical assistance and require the reviewed school to take corrective action to meet the requirements.

(2) *Trans fat.* State agencies conducting an administrative review must review product labels of manufacturer specifications to verify that the food products or ingredients used by the reviewed school(s) contain zero grams of *trans* fat (less than 0.5 grams) per serving.

(i) *Nutrient analyses of school meals.* Any nutrient analysis of school breakfasts conducted under the administrative review process set forth in §210.18 of this chapter must be performed in

Food and Nutrition Service, USDA

§ 220.8

accordance with the procedures established in §210.10(i) of this chapter. The purpose of the nutrient analysis is to determine the average levels of calories, saturated fat, and sodium in the breakfasts offered to each age grade group over a school week.

(j) *Responsibility for monitoring meal requirements.* Compliance with the applicable breakfast requirements in paragraph (b) of this section, including the dietary specifications for calories, saturated fat, sodium and trans fat, and paragraphs (o) and (p) of this section will be monitored by the State agency through administrative reviews authorized in §210.18 of this chapter.

(k) *Menu choices at breakfast.* The requirements in §210.10(k) of this chapter also apply to this Program.

(1) *Requirements for breakfast period.*

(1) *Timing.* Schools must offer breakfasts meeting the requirements of this section at or near the beginning of the school day.

(2) [Reserved]

(m) *Exceptions and variations allowed in reimbursable meals.* The requirements in §210.10(m) of this chapter also apply to this Program.

(n) *Nutrition disclosure.* The requirements in §210.10(n) of this chapter also apply to this Program.

(o) *Breakfast requirements for preschoolers—(1) Breakfasts served to preschoolers.* Schools serving breakfast to children ages 1 through 4 under the School Breakfast Program must serve the meal components and quantities required in the breakfast meal pattern established for the Child and Adult Care Food Program under §226.20(a), (c)(1), and (d) of this chapter. In addition, schools serving breakfasts to this age group must comply with the requirements set forth in paragraphs (a), (c)(3), (g), (k), (l), and (m) of this section as applicable.

(2) *Preschooler breakfast meal pattern table.* The minimum amounts of food components to be served at breakfast are as follows:

PRESCHOOL BREAKFAST MEAL PATTERN

Food components and food items ¹	Minimum quantities	
	Ages 1-2	Ages 3-5
Fluid Milk ²	4 fluid ounces	6 fluid ounces.
Vegetables, fruits, or portions of both ³	1/4 cup	1/2 cup.
Grains (oz eq). ^{4,5,6}	1/2 slice	1/2 slice.
Whole grain-rich or enriched bread	1/2 serving	1/2 serving.
Whole grain-rich or enriched bread product, such as biscuit, roll, muffin	1/4 cup	1/4 cup.
Whole grain-rich, enriched, or fortified cooked breakfast cereal, ⁷ cereal grain, and/or pasta	1/2 cup	1/2 cup.
Whole grain-rich, enriched, or fortified ready-to-eat breakfast cereal (dry, cold). ⁷	3/4 cup	3/4 cup.
Flakes or rounds	1/8 cup	1/8 cup.
Puffed cereal	1/8 cup	1/8 cup.
Granola	1/8 cup	1/8 cup.

Endnotes:

- ¹ Must serve all three components for a reimbursable meal.
- ² Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.
- ³ Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.
- ⁴ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.
- ⁵ Meat and meat alternates may be used to meet the entire grains requirement a maximum of three times a week. One ounce of meat and meat alternates is equal to one ounce equivalent of grains.
- ⁶ Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.
- ⁷ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

Food and Nutrition Service, USDA

§ 220.9

(p) *Breakfast requirements for infants—*
 (1) *Breakfasts served to infants.* Schools serving breakfasts to infants ages birth through 11 months under the School Breakfast Program must serve the food components and quantities required in the breakfast meal pattern established for the Child and Adult Care Food Program, under § 226.20(a), (b), and (d) of

this chapter. In addition, schools serving breakfasts to infants must comply with the requirements set forth in paragraphs (a), (c)(3), (g), (k), (l), and (m) of this section as applicable.

(2) *Infant breakfast meal pattern table.* The minimum amounts of food components to be served at breakfast are as follows:

INFANT BREAKFAST MEAL PATTERN

Age birth through 5 months	Age 6 through 11 months
4–6 fluid ounces breastmilk ¹ or formula ² ..	6–8 fluid ounces breastmilk ¹ or formula; ² and 0–4 tablespoons infant cereal; ^{2,3} meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or 0–4 ounces or ½ cup of yogurt; ⁴ or a combination of the above; ⁵ and 0–2 tablespoons vegetable or fruit, or a combination of both ^{5,6}

Endnotes:

¹ Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

² Infant formula and dry infant cereal must be iron-fortified.

³ Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.

⁴ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁵ A serving of this component is required when the infant is developmentally ready to accept it.

⁶ Fruit and vegetable juices must not be served.

[77 FR 4154, Jan. 26, 2012, as amended at 78 FR 39093, June 28, 2013; 81 FR 24375, Apr. 25, 2016; 81 FR 50193, July 29, 2016; 81 FR 75675, Nov. 1, 2016; 82 FR 56714, Nov. 30, 2017; 83 FR 63790, Dec. 12, 2018; 84 FR 50292, Sept. 25, 2019; 85 FR 7854, Feb. 12, 2020; 85 FR 74849, Nov. 24, 2020]

§ 220.9 Reimbursement payments.

(a) State agencies, or FNSRO's where applicable, shall make reimbursement payments to schools only in connection with breakfasts meeting the requirements of § 220.8, and reported in accordance with § 220.11(b) of this part. School Food Authorities shall plan for and prepare breakfasts on the basis of participation trends, with the objective of providing one breakfast per child per day. Production and participation records shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to precisely estimate the number of breakfasts needed and to reduce the resultant waste, any excess breakfasts that are prepared may be served to eligible children and may be claimed for reimbursement unless the State agency, or FNSRO where applicable, determines that the School Food

Authority has failed to plan and prepare breakfasts with the objective of providing one breakfast per child per day. In no event shall the School Food Authority claim reimbursement for free and reduced price breakfasts in excess of the number of children approved for free and reduced price meals.

(b) The rates of reimbursement for breakfasts served to eligible children in schools not in severe need are the applicable national average payment factors for breakfasts. The maximum rates of reimbursement for breakfasts served to eligible children in schools determined to be in severe need are those prescribed by the Secretary. National average payment factors and maximum rates of reimbursement for the School Breakfast Program shall be prescribed annually by the Secretary in the FEDERAL REGISTER.

(c) The total reimbursement for breakfasts served to eligible children in schools not in severe need, and schools in severe need during the school year shall not exceed the sum of the products obtained by multiplying the total numbers of such free, reduced price and paid breakfasts, respectively,

§ 220.10

by the applicable rate of reimbursement for each type of breakfast as prescribed for the school year.

(d) The State agency, or FNSRO where applicable, shall determine whether a school is in severe need based on the following eligibility criteria:

(1) The school is participating in or desiring to initiate a breakfast program; and

(2) At least 40 percent of the lunches served to students at the school in the second preceding school year were served free or at a reduced price. Schools that did not serve lunches in the second preceding year and that would like to receive reimbursement at the severe need rate may apply to their administering State agency. The administering State agency shall approve or deny such requests in accordance with guidance, issued by the Secretary, that determines that the second preceding school year requirement would otherwise have been met.

(Sec. 6, Pub. L. 95-627, 92 Stat. 3620 (42 U.S.C. 1776; secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1753, 1759(a), 1758, 1773; sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757); 44 U.S.C. 3506))

[Amdt. 25, 41 FR 34760, Aug. 17, 1976, as amended by Amdt. 29, 44 FR 48159, Aug. 17, 1979; Amdt. 38, 46 FR 50928, Oct. 16, 1981; 46 FR 51368, Oct. 20, 1981; 47 FR 746, Jan. 7, 1982; 47 FR 31375, July 20, 1982; 48 FR 40196, 40197, Sept. 6, 1983; 60 FR 31222, June 13, 1995; 65 FR 26923, May 9, 2000; 70 FR 66249, Nov. 2, 2005]

§ 220.10 Effective date for reimbursement.

Reimbursement payments under the School Breakfast Program may be made only to School Food Authorities operating under an agreement with the State Agency or the Department, and may be made only after execution of the agreement. Such payments may include reimbursement in connection with breakfasts served in accordance with provisions of the program in the calendar month preceding the calendar month in which the agreement is executed.

[32 FR 35, Jan. 5, 1967, as amended by Amdt. 9, 37 FR 9613, May 13, 1972]

7 CFR Ch. II (1-1-21 Edition)

§ 220.11 Reimbursement procedures.

(a) To be entitled to reimbursement under this part, each School Food Authority shall submit to the State agency, or FNSRO where applicable, a monthly Claim for Reimbursement.

(b) Claims for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of School Program Operations required under § 220.13(b)(2). Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall include only breakfasts served in that month except if the first or last month of Program operations for any year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years. If a single State agency administers any combination of the Child Nutrition Programs, the SFA shall be able to use a common claim form with respect to claims for reimbursement for meals served under those programs. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency, or FNSRO where applicable, not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency, or FNSRO where applicable, shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FNS-10) for the claim month which is required under § 220.13(b)(2). Upward adjustments in Program funds claimed which are not reflected in the final FNS-10 for the claim month shall not be made

§ 225.15

(5) Provides an ongoing year-round service to the community which it proposes to serve under the Program, except as provided for in §225.6(b)(4);

(6) Certifies that all sites have been visited and have the capability and the facilities to provide the meal service planned for the number of children anticipated to be served; and

(7) Enters into a written agreement with the State agency upon approval of its application, as required in §225.6(e).

(d) *Requirements specific to sponsor types.* (1) If the sponsor is a camp, it must certify that it will collect information on participants' eligibility to support its claim for reimbursement.

(2) If the sponsor administers the Program at sites that provide summer school sessions, it must ensure that these sites are open to children enrolled in summer school and to all children residing in the area served by the site.

(3) Sponsors which are units of local, municipal, county, or State government, and sponsors which are private nonprofit organizations, will only be approved to administer the Program at sites where they have administrative oversight. Administrative oversight means that the sponsor shall be responsible for:

(i) Maintaining contact with meal service staff, ensuring that there is adequately trained meal service staff on site, monitoring the meal service throughout the period of Program participation, and terminating meal service at a site if staff fail to comply with Program regulations; and

(ii) Exercising management control over Program operations at sites throughout the period of Program participation by performing the functions specified in §225.15.

(4) If the sponsor administers homeless feeding sites, it must:

(i) Document that the site is not a residential child-care institution as defined in paragraph (c) of the definition of 'School' contained in §210.2 of this chapter;

(ii) Document that the primary purpose of the homeless feeding site is to provide shelter and meals to homeless families; and

(iii) Certify that these sites employ meal counting methods to ensure that

7 CFR Ch. II (1–1–21 Edition)

reimbursement is claimed only for meals served to homeless and non-homeless children.

(5) If the sponsor administers NYSP sites, it must ensure that all children at these sites are enrolled participants in the NYSP.

(6) If the sponsor is a private nonprofit organization, it must certify that it:

(i) Exercises full control and authority over the operation of the Program at all sites under the sponsorship of the organization;

(ii) Provides ongoing year-round activities for children or families;

(iii) Demonstrates that the organization has adequate management and the fiscal capacity to operate the Program;

(iv) 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

(v) Meets applicable State and local health, safety, and sanitation standards.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13469, Apr. 10, 1990; 64 FR 72486, Dec. 28, 1999; 64 FR 72898, Dec. 29, 1999; 65 FR 50128, Aug. 17, 2000; 78 FR 13450, Feb. 28, 2013; 83 FR 25360, June 1, 2018]

§ 225.15 Management responsibilities of sponsors.

(a) *General.* (1) Sponsors shall operate the food service in accordance with: the provisions of this part; any instructions and handbooks issued by FNS under this part; and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of this part.

(2) Sponsors shall not claim reimbursement under parts 210, 215, 220, or 226 of this chapter. In addition, the sponsor must ensure that records of any site serving homeless children accurately reflect commodity allotments received as a "charitable institution", as defined in §§250.3 and 250.41 of this chapter. Commodities received for Program meals must be based only on the number of eligible children's meals served. Sponsors may use funds from other Federally-funded programs to supplement their meal service but must, in calculating their claim for reimbursement, deduct such funds from total operating and administrative

Food and Nutrition Service, USDA

§ 225.15

costs in accordance with the definition of "income accruing to the Program" at §225.2 and with the regulations at §225.9(d). Sponsors which are school food authorities may use facilities, equipment and personnel supported by funds provided under this part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

(3) No sponsor may contract out for the management responsibilities of the Program described in this section.

(4) Sponsors must maintain documentation of a nonprofit food service including copies of all revenues received and expenses paid from the nonprofit food service account. Program reimbursements and expenditures may be included in a single nonprofit food service account with funds from any other Child Nutrition Programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966, except the Special Supplemental Nutrition Program for Women, Infants, and Children. All Program reimbursement funds must be used solely for the conduct of the nonprofit food service operation. The net cash resources of the nonprofit food service of each sponsor participating in the Program may not exceed one month's average expenditures for sponsors operating only during the summer months and three months' average expenditures for sponsors operating Child Nutrition Programs throughout the year. State agency approval shall be required for net cash resources in excess of the requirements set forth in this paragraph (a)(4). Sponsors shall monitor Program costs and, in the event that net cash resources exceed the requirements outlined, take action to improve the meal service or other aspects of the Program.

(b) *Meal Ordering.* (1) Each sponsor shall, to the maximum extent feasible, utilize either its own food service facilities or obtain meals from a school food service facility. If the sponsor obtains meals from a school food service facility, the applicable requirements of this part shall be embodied in a written agreement between the sponsor and the school.

(2) Upon approval of its application or any adjustment in the approved levels of meal service for its sites established under §225.6(d)(2), vended sponsors shall inform their food service management company of the approved level at each site for which the food service management company will provide meals.

(3) Sponsors shall plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service. The sponsor shall make the adjustments necessary to achieve this objective using the results from its monitoring of sites. For sites for which approved levels of meal service have been established in accordance with §225.6(d)(2), the sponsor shall adjust the number of meals ordered or prepared with the objective of providing only one meal per child whenever the number of children attending the site is below the approved level. The sponsor shall not order or prepare meals for children at any site in excess of the site's approved level, but may order or prepare meals above the approved level if the meals are to be served to adults performing necessary food service labor in accordance with §225.9(d)(5). Records of participation and of preparation or ordering of meals shall be maintained to demonstrate positive action toward meeting this objective.

(4) In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, sponsors may claim reimbursement for a number of second meals which does not exceed two percent of the number of first meals served to children for each meal type (i.e., breakfasts, lunches, supplements, or suppers) during the claiming period. The State agency shall disallow all claims for second meals if it determines that the sponsor failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. Second meals shall be served only after all participating children at the site's meal service have been served a meal.

§ 225.15

7 CFR Ch. II (1–1–21 Edition)

(c) *Records and claims.* (1) Sponsors shall maintain accurate records justifying all meals claimed and documenting that all Program funds were spent only on allowable Child Nutrition Program costs. Failure to maintain such records may be grounds for denial of reimbursement for meals served and/or administrative costs claimed during the period covered by the records in question. The sponsor's records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and the State agency for a period of three years following the date of submission of the final claim for reimbursement for the fiscal year.

(2) Sponsors shall submit claims for reimbursement in accordance with this part. All final claims must be submitted to the State agency within 60 days following the last day of the month covered by the claim.

(d) *Training and monitoring.* (1) Each sponsor shall hold Program training sessions for its administrative and site personnel and shall allow no site to operate until personnel have attended at least one of these training sessions. The State agency may waive these training requirements for operation of the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar). Training of site personnel shall, at a minimum, include: the purpose of the Program; site eligibility; recordkeeping; site operations; meal pattern requirements; and the duties of a monitor. Each sponsor shall ensure that its administrative personnel attend State agency training provided to sponsors, and sponsors shall provide training throughout the summer to ensure that administrative personnel are thoroughly knowledgeable in all required areas of Program administration and operation and are provided with sufficient information to enable them to carry out their Program responsibilities. Each site shall have present at each meal service at least one person who has received this training.

(2) Sponsors shall visit each of their sites at least once during the first

week of operation under the Program and shall promptly take such actions as are necessary to correct any deficiencies.

(3) Sponsors shall review food service operations at each site at least once during the first four weeks of Program operations, and thereafter shall maintain a reasonable level of site monitoring. Sponsors shall complete a monitoring form developed by the State agency during the conduct of these reviews.

(e) *Media Release.* Each sponsor shall annually announce in the media serving the area from which it draws its attendance the availability of free meals. Camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist") shall annually announce to all participants the availability of free meals for eligible children. All media releases issued by camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist") shall include: the Secretary's family-size and income standards for reduced price school meals labeled "SFSP Income Eligibility Standards"; a statement that a foster child and children who are members of households receiving SNAP, FDPIR, or TANF benefits are automatically eligible to receive free meal benefits at eligible program sites; and a statement that meals are available without regard to race, color, national origin, sex, age, or disability.

(f) *Application for free Program meals—*

(1) *Purpose of application form.* The application is used to determine the eligibility of children attending camps and the eligibility of sites that are not open sites as defined in paragraph (a) of the definition of "areas in which poor economic conditions exist", in § 225.2. In these situations, parents or guardians of children enrolled in camps or these other sites must be given application forms to provide information described in paragraph (f)(2) or (f)(3) of this section, as applicable. Applications are not necessary if other information sources are available and can be used to determine eligibility of individual children in camps or sites.

Food and Nutrition Service, USDA

§ 225.15

(2) *Application procedures based on household income.* The household member completing the application on behalf of the child enrolled in the Program must provide the following information:

- (i) The names of all children for whom application is made;
- (ii) The names of all other household members;
- (iii) The last four digits of the social security number of the adult household member who signs the application or an indication that the household member does not have a social security number;
- (iv) The income received by each household member identified by source of income;
- (v) The signature of an adult household member;
- (vi) The date the application is completed and signed.

(3) *Application based on the household's receipt of SNAP, FDPIR, or TANF benefits.* Households may apply on the basis of receipt of food stamp, FDPIR, or TANF benefits by providing the following information:

- (i) The name(s) and SNAP, FDPIR, or TANF case number(s) of the child(ren) who are enrolled in the Program; and
- (ii) The signature of an adult household member.

(4) *Information or notices required on application forms.* Application forms or descriptive materials given to households about applying for free meals must contain the following information:

- (i) The family-size and income levels for reduced price school meal eligibility with an explanation that households with incomes less than or equal to these values are eligible for free Program meals (NOTE: The income levels for free school meal eligibility must not be included on the application or in other materials given to the household).
- (ii) A statement that a foster child who is a member of a household that receives SNAP, FDPIR, or TANF benefits is automatically eligible to receive free meals in the Program;
- (iii) A statement informing households of how information provided on the application will be used. Each ap-

plication for free meals must include substantially the following statement:

(A) "The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced-price meals. You must include the last four digits of the social security number of the adult household member who signs the application. The last four digits of the social security number are not required when you apply on behalf of a foster child or you list a Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number or other FDPIR identifier for your child or when you indicate that the adult household member signing the application does not have a social security number. We MAY share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs, and with auditors for program reviews and law enforcement officials to help them look into violations of program rules."

(B) When the State agency or sponsor, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (i) of this section, must be added to the statement. State agencies and sponsors are responsible for drafting the appropriate notice.

(iv) The statement used to inform the household about the use of social security numbers must comply with the Privacy Act of 1974 (Pub. L. 93-579). If a State or local agency plans to use the social security numbers for uses not described in paragraph (f)(4)(iv) of this section, the notice must be revised to explain those uses.

(v) Examples of income that should be provided on the application, including: Earnings, wages, welfare benefits, pensions, support payments, unemployment compensation, social security, and other cash income;

(vi) A notice placed immediately above the signature block stating that

§ 225.15

7 CFR Ch. II (1–1–21 Edition)

the person signing the application certifies that all information provided is correct, that the household is applying for Federal benefits in the form of free Program meals, that Program officials may verify the information on the application, and that purposely providing untrue or misleading statements may result in prosecution under State or Federal criminal laws; and

(vii) A statement that if SNAP, FDPIR, or TANF case numbers are provided, they may be used to verify the current SNAP, FDPIR, or TANF certification for the children for whom free meals benefits are claimed.

(5) *Verifying information on Program applications.* Households selected to verify information on their Program applications must be notified in writing that:

(i) They will lose Program benefits or be terminated from participation if they do not cooperate with the verification process;

(ii) They will be given the name and phone number of an official who can assist in the verification process;

(iii) Verification may occur during program reviews, audits, and investigations;

(iv) Verification may include contacting employers, SNAP or welfare offices, or State employment offices to determine the accuracy of statements on the application about income, receipt of SNAP, FDPIR, TANF, or unemployment benefits; and

(v) They may lose benefits or face claims or legal action if incorrect information is reported on the application.

(g) *Disclosure of children's free and reduced price meal eligibility information to certain programs and individuals without parental consent.* The State agency or sponsor, as appropriate, may disclose aggregate information about children eligible for free and reduced price meals to any party without parental notification and consent when children cannot be identified through release of the aggregate data or by means of deduction. Additionally, the State agency or sponsor may disclose information that identifies children eligible for free and reduced price meals to the programs and the individuals specified in this paragraph (g) without parent/

guardian consent. The State agency or sponsor that makes the free and reduced price meal eligibility determination is responsible for deciding whether to disclose program eligibility information.

(1) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section may have access to children's free and reduced price meal eligibility information, without parental consent. Persons considered directly connected with administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section are Federal, State, or local program operators responsible for the ongoing operation of the program or activity or persons responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies and program operators contract with to assist in the administration or enforcement of their program in their behalf.

(2) *Disclosure of children's names and free or reduced price meal eligibility status.* The State agency or sponsor, as appropriate, may disclose, without parental consent, only children's names and eligibility status (whether they are eligible for free meals or reduced price meals) to persons directly connected with the administration or enforcement of:

(i) A Federal education program;

(ii) A State health program or State education program administered by the State or local education agency;

(iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (i.e., food assistance programs for households with incomes at or below 185 percent of the Federal poverty level); or

Food and Nutrition Service, USDA

§ 225.15

(3) *Disclosure of all eligibility information.* In addition to children's names and eligibility status, the State agency or sponsor, as appropriate, may disclose, without parental consent, all eligibility information obtained through the free and reduced price meal eligibility process (including all information on the application or obtained through direct certification) to:

(i) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the Summer Food Service Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch Program, Special Milk Program, School Breakfast Program, Child and Adult Care Food Program, and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (parts 210, 215, 220, 226 and 246, respectively, of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (g)(2) and (g)(3) of this section.

(4) *Use of free and reduced price meals eligibility information by programs other than Medicaid or the State Children's Health Insurance Program (SCHIP).* State agencies and sponsors may use children's free and reduced price meal eligibility information for administering or enforcing the Summer Food Service Program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the Summer Food Service Program may use the information for that purpose. Individuals and programs to which children's free or reduced price meal eligibility information has been disclosed under this section may use the information only in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(h) *Disclosure of children's free or reduced price meal eligibility information to*

Medicaid and/or SCHIP, unless parents decline. Children's free or reduced price meal eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the sponsor so elect, the parental/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (h)(1) of this section are met. The State agency or sponsor, as appropriate, may disclose children's names, eligibility status (whether they are eligible for free or reduced price meals), and any other eligibility information obtained through the free and reduced price meal applications or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP. Persons directly connected to the administration of Medicaid and SCHIP are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations for Medicaid or SCHIP.

(1) The State agency must ensure that:

(i) The sponsors and health insurance program officials have a written agreement that requires the health insurance program agency to use the eligibility information to seek to enroll children in Medicaid and SCHIP; and

(ii) Parents/guardians are notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed, prior to any disclosure.

(2) *Use of children's free and reduced price meal eligibility information by Medicaid/SCHIP.* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal eligibility information must use the information to seek to enroll children in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP. No further disclosure of the information may be made. Medicaid and SCHIP agencies and

§ 225.15

7 CFR Ch. II (1-1-21 Edition)

health insurance program operators also may verify children's eligibility in a program under the Child Nutrition Act of 1966 or the Richard B. Russell National School Lunch Act.

(i) *Notifying households of potential uses and disclosures of children's free and reduced price meal eligibility information.* Households must be informed that the information they provide on the free and reduced price meal application will be used to determine eligibility for free or reduced price meals and that their eligibility information may be disclosed to other programs.

(1) For disclosures to programs, other than Medicaid or the State Children's Health Insurance Program (SCHIP), that are permitted access to children's eligibility information, without parental/guardian consent, the State agency or sponsor, as appropriate, must notify parents/guardians at the time of application that their children's free or reduced price meal eligibility information may be disclosed. The State agency or sponsor, as appropriate, must add substantially the following statement to the statement required under paragraph (f)(4)(iv) of this section, "We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs; auditors for program reviews; and law enforcement officials to help them look into violations of program rules." For children determined eligible for free meals through the direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification.

(2) For disclosure to Medicaid or SCHIP, the State agency or sponsor, as appropriate, must notify parents/guardians that their children's free or reduced price meal eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed and notifies the State agency or sponsor, as appropriate, by a date specified by the State agency or sponsor, as appropriate. Only the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal application

may decline the disclosure of eligibility information to Medicaid or SCHIP. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP, and that their decision will not affect their children's eligibility for free or reduced price meals. The notification may be included in the letter/notice to parents/guardians that accompanies the free and reduced price meal application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond if they do not want their information disclosed. The State agency or sponsor, as appropriate, must add substantially the following statement to the statement required under paragraph (f) of this section, "We may share your information with Medicaid or the State Children's Health Insurance Program, unless you tell us not to. The information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP." For children determined eligible for free meals through direct certification, the notice of potential disclosure and opportunity to decline the disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification process.

(j) *Other disclosures.* State agencies and sponsors that plan to use or disclose information about children eligible for free and reduced price meals in ways not specified in this section must obtain written consent from children's parents or guardians prior to the use or disclosure.

(1) The consent must identify the information that will be shared and how the information will be used.

(2) There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free meals and that the individuals or programs receiving the information will not share the information with any other entity or program.

Food and Nutrition Service, USDA

§ 225.15

(3) Parents/guardians must be permitted to limit the consent only to those programs with which they wish to share information.

(4) The consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal application.

(k) *Agreements with programs/individuals receiving children's free or reduced price meal eligibility information.* Agreements or Memoranda of Understanding (MOU) are recommended or required as follows:

(1) The State agency or sponsor, as appropriate, should have a written agreement or MOU with programs or individuals receiving eligibility information, prior to disclosing children's free and reduced price meal eligibility information. The agreement or MOU should include information similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (k)(2) of this section.

(2) For disclosures to Medicaid or SCHIP, the State agency or sponsor, as appropriate, must have a written agreement with the State or local agency or agencies administering Medicaid or SCHIP prior to disclosing children's free or reduced price meal eligibility information to those agencies. At a minimum, the agreement must:

(i) Identify the health insurance program or health agency receiving children's eligibility information;

(ii) Describe the information that will be disclosed;

(iii) Require that the Medicaid or SCHIP agency use the information obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;

(iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;

(v) Describe how the information will be protected from unauthorized uses and disclosures;

(vi) Describe the penalties for unauthorized disclosure; and

(vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or sponsor, as appropriate.

(l) *Penalties for unauthorized disclosure or misuse of children's free and reduced*

price meal eligibility information. In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

(m) *Food service management companies.* (1) Failure by a sponsor to comply with the provisions of this section shall be sufficient grounds for the State agency to terminate that sponsor's participation in accordance with § 225.18.

(2) Any sponsor may contract with a food service management company to manage the sponsor's food service operations and/or for the preparation of unitized meals with or without milk or juice. Exceptions to the unitizing requirement may only be made in accordance with the provisions set forth at § 225.6(h)(3).

(3) Any vended sponsor shall be responsible for ensuring that its food service operation is in conformity with its agreement with the State agency and with all the applicable provisions of this part.

(4) In addition to any applicable State or local laws governing bid procedures, and with the exceptions identified in this paragraph, each sponsor which contracts with a food service management company shall comply with the competitive bid procedures described in this paragraph. Sponsors that are schools or school food authorities and have an exclusive contract with a food service management company for year-round service, and sponsors whose total contracts with food service management companies will not exceed the simplified acquisition threshold in 2 CFR part 200, as applicable, shall not be required to comply with these procedures. These exceptions do not relieve the sponsor of the responsibility to ensure that competitive procurement procedures are followed in contracting with any food service management company. Each sponsor whose proposed contract is subject to the specific bid procedures

§ 225.16

7 CFR Ch. II (1–1–21 Edition)

set forth in this paragraph shall ensure, at a minimum, that:

(i) All proposed contracts are publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement includes the time and place of the bid opening;

(ii) The bids are publicly opened;

(iii) The State agency is notified, at least 14 calendar days prior to the opening of the bids, of the time and place of the bid opening;

(iv) The invitation to bid does not specify a minimum price;

(v) The invitation to bid contains a cycle menu approved by the State agency upon which the bid is based;

(vi) The invitation to bid contains food specifications and meal quality standards approved by the State agency upon which the bid is based;

(vii) The invitation to bid does not specify special meal requirements to meet ethnic or religious needs unless such special requirements are necessary to meet the needs of the children to be served;

(viii) Neither the invitation to bid nor the contract provides for loans or any other monetary benefit or term or condition to be made to sponsors by food service management companies;

(ix) Nonfood items are excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(x) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, are submitted to the State agency prior to the beginning of Program operations;

(xi) Copies of all bids received are submitted to the State agency, along with the sponsor's reason for choosing the successful bidder; and

(xii) All bids in an amount which exceeds the lowest bid and all bids totaling the amount specified in the small purchase threshold in 2 CFR part 200, as applicable, or more are submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(5) Each food service management company which submits a bid exceed-

ing the simplified acquisition threshold in 2 CFR part 200, as applicable, shall obtain a bid bond in an amount not less than 5 percent nor more than 10 percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.

(6) Each food service management company which enters into a food service contract exceeding the small purchase threshold in 2 CFR part 200, as applicable, with a sponsor shall obtain a performance bond in an amount not less than 10 percent nor more than 25 percent of the value of the contract for which the bid is made, as determined by the State agency. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds the simplified acquisition threshold in 2 CFR part 200, as applicable. Sponsors shall require the food service management company to furnish a copy of the performance bond within ten days of the awarding of the contract.

(7) Food service management companies shall obtain bid bonds and performance bonds only from surety companies listed in the current Department of the Treasury Circular 570. No sponsor or State agency shall allow food service management companies to post any "alternative" forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts.

(n) *Other responsibilities.* Sponsors shall comply with all of the meal service requirements set forth in § 225.16.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13470, Apr. 10, 1990; 61 FR 25553, May 22, 1996; 64 FR 72486, Dec. 28, 1999; 64 FR 72898, Dec. 29, 1999; 65 FR 82251, Dec. 28, 2000; 66 FR 2202, Jan. 11, 2001; 72 FR 10895, Mar. 12, 2007; 76 FR 22798, Apr. 25, 2011; 78 FR 13450, Feb. 28, 2013; 83 FR 25360, June 1, 2018; 84 FR 15501, Apr. 16, 2019]

§ 225.16 Meal service requirements.

(a) *Sanitation.* Sponsors shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and