

Attachment F.  
Title 7 CFR Part 220 – School Breakfast Program Regulations

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## **Title 7 –Agriculture**

### **Subtitle B –Regulations of the Department of Agriculture**

#### **Chapter II –Food and Nutrition Service, Department of Agriculture**

##### **Subchapter A –Child Nutrition Programs**

###### **Part 220** School Breakfast Program

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###### **Appendix A to Part 220**

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###### **Appendix C to Part 220**

Child Nutrition (CN) Labeling Program

# PART 220—SCHOOL BREAKFAST PROGRAM

**Authority:** 42 U.S.C. 1773, 1779, unless otherwise noted.

## § 220.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out the provisions of section 4 of the Child Nutrition Act of 1966, as amended, which authorizes payments to the States to assist them to initiate, maintain, or expand nonprofit breakfast programs in schools.

[Amdt. 25, 41 FR 34758, Aug. 17, 1976]

## § 220.2 Definitions.

For the purpose of this part the term:

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

**Act** means the Child Nutrition Act of 1966, as amended.

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

**Breakfast** means a meal which meets the meal requirements set out in §§ 220.8 and 220.23, and which is served to a child in the morning hours. The meal shall be served at or close to the beginning of the child's day at school.

**Child** means:

- (1) A student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (1) and (2) of the definition of "School", including students who are mentally or physically disabled as defined by the State and who are participating in a school program established for the mentally or physically disabled; or
- (2) A person under 21 chronological years of age who is enrolled in an institution or center as described in paragraph (3) of the definition of *School* in this section.

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

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

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

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

**Distributing agency** means a State, Federal, or private agency which enters into an agreement with the Department for the distribution of commodities pursuant to part 250 of this chapter.

**Fiscal year** means the period of 15 calendar months beginning July 1, 1976, and ending September 30, 1977; and the period of 12 calendar months beginning October 1, 1977, and each October 1 of any calendar year thereafter and ending September 30 of the following calendar year.

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

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

**FNS** means the Food and Nutrition Service of the Department.

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

**Free breakfast** means a breakfast for which neither the child nor any member of his family pays or is required to work in the school or in the school's food service.

**Infant cereal** means any iron fortified dry cereal especially formulated and generally recognized as cereal for infants that is routinely mixed with breast milk or iron-fortified infant formula prior to consumption.

**Infant formula** means any iron-fortified infant formula intended for dietary use solely as a food for normal healthy infants excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

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

**Menu item** means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in § 220.23, except for those foods that are considered as foods of minimal nutritional value as provided for in the definition of *Foods of minimal nutritional value* in this section which are not offered as part of a menu item in a reimbursable meal. For the purposes of a reimbursable breakfast, a minimum of three menu items must be offered, one of which shall be fluid milk served as a beverage or on cereal or both; under offer versus serve, a student may decline only one menu item.

**National School Lunch Program** means the Program authorized by the National School Lunch Act.

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

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

**Nonprofit school food service** means all food service operations conducted by the School Food Authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food service.

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

**Nonprofit** when applied to schools or institutions eligible for the Program means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or in the Commonwealth of Puerto Rico, certified by the Governor.

**Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning** means ways to develop breakfast menus based on the analysis for nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met in accordance with § 220.23(e)(5). However, for the purposes of Assisted Nutrient Standard Menu Planning, breakfast menu planning and analysis are completed by other entities and must incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority in accordance with § 220.23(f).

**OA** means the Office of Audit of the Department.

**OI** means the Office of Investigation of the Department.

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

**Program** means the School Breakfast Program.

**Reduced price breakfast** means a breakfast which meets all of the following criteria:

- (1) The price shall be less than the full price of the breakfast,
- (2) the price shall be 30 cents or lower, and
- (3) neither the child nor any member of his family shall be required to supply an equivalent value in work for the school or the school's food service.

**Reimbursement** means financial assistance paid or payable to participating schools for breakfasts meeting the requirements of § 220.8 served to eligible children at rates assigned by the State agency, or FNSRO where applicable. The term "reimbursement" also includes financial assistance made available through advances to School Food Authorities.

**Revenue** when applied to nonprofit school food service means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

**School** means:

- (1) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings;
- (2) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; or
- (3) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term "residential child care institutions" includes, but is not limited to: Homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more.

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

**School in severe need** means a school determined to be eligible for rates of reimbursement in excess of the prescribed National Average Payment Factors, based upon the criteria set forth in § 220.9(d).

**School Food Authority** means the governing body which is responsible for the administration of one or more schools and which has legal authority to operate a breakfast program therein.

**School week** means the period of time used to determine compliance with the meal requirements in § 220.8 and § 220.23. The period must be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period must be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school breakfasts are offered less than three times must be combined with either the previous or the coming week.

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

**Secretary** means the Secretary of Agriculture.

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

**State agency** means:

- (1) The State educational agency or
- (2) such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools as described in paragraph (3) of the definition of *School* in this section.

*State educational agency* means, as the State legislature may determine:

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

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

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

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

*Yogurt* means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, and 21 CFR 131.206, respectively.

(Sec. 6, Pub. L. 95-627, 92 Stat. 3620 (42 U.S.C. 1760); sec. 205, Pub. L. 96-499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758; secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; sec. 819, Pub. L. 97-35; 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757))

[Amdt. 25, 41 FR 34758, Aug. 17, 1976]

**Editorial Note:** For FEDERAL REGISTER citations affecting § 220.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 220.3 Administration.

- (a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program covered by this part. Within FNS, CND shall be responsible for administration of the Program.
- (b) Within the States, responsibility for the administration of the Program in schools as described in paragraphs (1) and (2) of the definition of *School* in § 220.2 shall be in the State educational agency, except that FNSRO shall administer the Program with respect to nonprofit private schools and adding in their place the words “as described in paragraph (1) of the definition of *School* in § 220.2 in any State wherein the State educational agency is not permitted by law to disburse Federal funds paid to it under

the Program; *Provided, however*, That FNSRO shall also administer the Program in all other nonprofit private schools which have been under continuous FNS administration since October 1, 1980, unless the administration of such private schools is assumed by a State agency.

- (c) Within the States, responsibility for the administration of the Program in schools, as described in paragraph (3) of the definition of *School* in § 220.2, shall be in the State educational agency, or if the State educational agency cannot administer the Program in such schools, such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in such schools: *Provided, however*, That FNSRO shall administer the Program in such schools if the State agency is not permitted by law to disburse Federal funds paid to it under the Program to such schools; and *Provided, further*, That FNSRO shall also administer the Program in all other such schools which have been under continuous FNS administration since October 1, 1980, unless the administration of such schools is assumed by a State agency.
- (d) References in this part to “FNSRO where applicable” are to FNSRO as the agency administering the Program.
- (e) Each State agency desiring to take part in any of the programs shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part, 7 CFR parts 235, 245, 15, 15a, 15b and, as applicable, 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 subparts B and D and USDA implementing regulations 2 CFR part 400 and part 415 and FNS Instructions. Such agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.
- (f) ***Authority to waive statute and regulations.***
  - (1) As authorized under section 12(l) of the Richard B. Russell National School Lunch Act, FNS may waive provisions of such Act or the Child Nutrition Act of 1966, as amended, and the provisions of this part with respect to a State agency or eligible service provider. The provisions of this part required by other statutes may not be waived under this authority. FNS may only approve requests for a waiver that are submitted by a State agency and comply with the requirements at section 12(l)(1) and the limitations at section 12(l)(4), including that FNS may not grant a waiver that increases Federal costs.
  - (2)
    - (i) A State agency may submit a request for a waiver under paragraph (f)(1) of this section in accordance with section 12(l)(2) and the provisions of this part.
    - (ii) A State agency may submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver where the State concurs must be submitted to the appropriate FNSRO.
  - (3)
    - (i) An eligible service provider may submit a request for a waiver under paragraph (e)(1) of this section in accordance with section 12(l) and the provisions of this part. Any waiver request submitted by an eligible service provider must be submitted to the State agency for review. A State agency must act promptly on such a waiver request and must deny or concur with a request submitted by an eligible service provider.



- (ii) If a State agency concurs with a request from an eligible service provider, the State agency must promptly forward to the appropriate FNSRO the request and a rationale, consistent with section 12(l)(2), supporting the request. By forwarding the request to the FNSRO, the State agency affirms:
  - (A) The request meets all requirements for waiver submissions; and,
  - (B) The State agency will conduct all monitoring requirements related to regular Program operations and the implementation of the waiver.
- (iii) If the State agency denies the request, the State agency must notify the requesting eligible service provider and state the reason for denying the request in writing within 30 calendar days of the State agency's receipt of the request. The State agency response is final and may not be appealed to FNS.

(Sec. 804, 816 and 817, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785); 44 U.S.C. 3506)

[Amdt. 25, 41 FR 34759, Aug. 17, 1976, as amended at 47 FR 745, Jan. 7, 1982; Amdt. 42, 47 FR 14133, Apr. 2, 1982; Amdt. 56, 54 FR 2990, Jan. 23, 1989; 71 FR 39517, July 13, 2006; 72 FR 63792, Nov. 13, 2007; 81 FR 66491, Sept. 28, 2016; 87 FR 57354, Sept. 19, 2022]

#### **§ 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]

## § 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 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;
    - (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 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. 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.
- (iv) Provisions in part 250, subpart D of this chapter must be included to ensure the value of donated foods, *i.e.*, USDA Foods, are fully used in the nonprofit food service and credited to the nonprofit school food service account.

(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;
- (9) Purchase, in as large quantities as may be efficiently utilized in its nonprofit 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](http://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 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:

Table 1 to Paragraph (c) Introductory Text—Breakfast Meal Pattern

	Breakfast meal pattern		
	Grades K-5	Grades 6-8	Grades 9-12
Food Components	Amount of Food <sup>a</sup> per Week		
	(minimum per day)		
Fruits (cups) <sup>bc</sup>	5 (1)	5 (1)	5 (1)
Vegetables (cups) <sup>bc</sup>	0	0	0



	Breakfast meal pattern		
	Grades K-5	Grades 6-8	Grades 9-12
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) <sup>d</sup>	7-10 (1)	8-10 (1)	9-10 (1)
Meats/Meat Alternates (oz eq) <sup>e</sup>	0	0	0
Fluid milk (cups) <sup>f</sup>	5 (1)	5 (1)	5 (1)
<b>Other Specifications: Daily Amount Based on the Average for a 5-Day Week</b>			
Min-max calories (kcal) <sup>gh</sup>	350-500	400-550	450-600
Saturated fat (% of total calories) <sup>h</sup>	<10	<10	<10
Sodium Target 1 (mg) <sup>h</sup>	≤540	≤600	≤640
<i>Trans</i> fat <sup>h</sup>	Nutrition label or manufacturer specifications must indicate zero grams of <i>trans</i> fat per serving.		

<sup>a</sup> Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is 1/8 cup.

<sup>b</sup> One-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.

<sup>c</sup> Schools 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/peas (legumes), or "Other vegetables" subgroups, as defined in § 210.10(c)(2)(iii) of this chapter.

<sup>d</sup> At least 80 percent of grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched. Schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met.

<sup>e</sup> There is no meat/meat alternate requirement.

<sup>f</sup> All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk may be unflavored or flavored, provided that unflavored milk is offered at each meal service.

<sup>g</sup> The average daily calories for a 5-day school week must be within the range (at least the minimum and no more than the maximum values).

<sup>h</sup> 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. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat are not allowed.

- (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 alternates 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  $\frac{1}{2}$  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. At least 80 percent of grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

(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. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Milk may be flavored or unflavored, provided that unflavored milk is offered at each meal service. Schools must also comply with other applicable fluid milk requirements in § 210.10(d) 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 components. Under offer versus serve, students are allowed to decline one of the four food items, provided that students select at least 1/2 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) <sup>a b</sup>	350-500	400-550	450-600

<sup>a</sup> The average daily amount for a 5-day school must fall within the minimum and maximum levels.

<sup>b</sup> 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:

Table 3 to Paragraph (f)(3)—School Breakfast Program Sodium Limits

Age/grade group	Target 1 (mg)
K-5	≤540
6-8	≤600
9-12	≤640

(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 established 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 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.
- (l) **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:

Table 4 to Paragraph (o)(2)—Preschool Breakfast Meal Pattern

Food components and food items <sup>1</sup>	Minimum quantities	
	Ages 1-2	Ages 3-5
Fluid Milk <sup>2</sup>	4 fluid ounces	6 fluid ounces.
Vegetables, fruits, or portions of both <sup>3</sup>	1/4 cup	1/2 cup.
Grains (oz eq) <sup>4 5 6 7</sup>	1/2 ounce equivalent	1/2 ounce equivalent.

**Endnotes:**

<sup>1</sup> Must serve all three components for a reimbursable meal.

<sup>2</sup> 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.

<sup>3</sup> Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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).

<sup>7</sup> Refer to FNS guidance for additional information on crediting different types of grains.

(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:

Table 5 to Paragraph (p)(2)—Infant Breakfast Meal Pattern

Birth through 5 months	6 through 11 months
4-6 fluid ounces breastmilk <sup>1</sup> or formula <sup>2</sup>	6-8 fluid ounces breastmilk <sup>1</sup> or formula; <sup>2</sup> and
	0- 1/2 ounce equivalent infant cereal; <sup>2 3</sup> or
	0-4 tablespoons 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 1/2 cup of yogurt; <sup>4</sup> or a combination of the above; <sup>5</sup> and
	0-2 tablespoons vegetable or fruit, or a combination of both. <sup>5 6</sup>

<sup>1</sup> 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.

<sup>2</sup> Infant formula and dry infant cereal must be iron-fortified.

<sup>3</sup> Refer to FNS guidance for additional information on crediting different types of grains.

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

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

<sup>6</sup> 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; 86 FR 57546, Oct. 18, 2021; 87 FR 7006, Feb. 7, 2022; 87 FR 47332, Aug. 3, 2022; 87 FR 52329, Aug. 25, 2022]

**§ 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, 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]

### **§ 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 unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary.

- (c) Where a school participates in both the National School Lunch Program and the School Breakfast Program, the State agency or FNSRO, where applicable, may authorize the submission of one claim for reimbursement to cover both programs.
- (d) The school food authority shall establish internal controls which ensure the accuracy of breakfast counts prior to the submission of the monthly Claim for Reimbursement. At a minimum, these internal controls shall include: an on-site review of the breakfast counting and claiming system employed by each school within the jurisdiction of the school food authority; comparisons of daily free, reduced price and paid breakfast counts against data which will assist in the identification of breakfast counts in excess of the number of free, reduced price and paid breakfasts served each day to children eligible for such breakfasts; and a system for following up on those breakfast counts which suggest the likelihood of breakfast counting problems.
  - (1) **On-site reviews.** Every school year, each school food authority with more than one school shall perform no less than one on-site review of the breakfast counting and claiming system and the readily observable general areas of review identified under § 210.18(h) of this chapter, as specified by FNS, for a minimum of 50 percent of schools under its jurisdiction with every school within the jurisdiction being reviewed at least once every two years. The on-site review shall take place prior to February 1 of each school year. Further, if the review discloses problems with a school's meal counting or claiming procedures or general review areas, the school food authority shall ensure that the school implements corrective action, and within 45 days of the review, conduct a follow-up on-site review to determine that the corrective action resolved the problems. Each on-site review shall ensure that the school's claim is based on the counting system and that the counting system, as implemented, yields the actual number of reimbursable free, reduced price and paid breakfasts, respectively, served for each day of operation.

(2) **School food authority claims review process.** Prior to the submission of a monthly Claim for Reimbursement, each school food authority shall review the breakfast count data for each school under its jurisdiction to ensure the accuracy of the monthly Claim for Reimbursement. The objective of this review is to ensure that monthly claims include only the number of free, reduced price and paid breakfasts served on any day of operation to children currently eligible for such breakfasts.

(e) Notwithstanding any other provision of this section, the State agency, or FNSRO where applicable, may advance funds available for the School Breakfast Program to a School Food Authority in an amount equal to the reimbursement estimated for the total number of breakfasts, including free and reduced price breakfasts, to be served to children for 1 month. The State agency, or FNSRO where applicable, shall require School Food Authorities who receive advances of funds under the provisions of this paragraph to make timely submissions of claims for reimbursement on a monthly basis and shall suspend advances of funds in the absence of such timely submissions. Following the receipt of claims the State agency, or FNSRO where applicable, shall make such adjustments as are necessary in such advances of funds to insure that the total amount of reimbursement received by a School Food Authority for the fiscal year will not exceed an amount equal to the number of breakfasts, including free and reduced price breakfast, served to children times the respective rates of reimbursement assigned by the State agency, or FNSRO where applicable, in accordance with § 220.9.

(Title 1, Chapter I, Pub. L. 96-38, 93 Stat. 98 (42 U.S.C. 1776a); secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773, 1757); Pub. L. 97-370, 96 Stat. 1806)

[32 FR 35, Jan. 5, 1967, as amended by Amdt. 9, 37 FR 9613, May 13, 1972; 40 FR 30924, July 24, 1975; 45 FR 82622, Dec. 16, 1980; 47 FR 31376, July 20, 1982; 48 FR 40196, Sept. 6, 1983; Amdt. 49, 49 FR 18987, May 4, 1984; 64 FR 50742, Sept. 20, 1999; 81 FR 50193, July 29, 2016]

## § 220.12 Competitive food services.

School food authorities must comply with the competitive food service and standards requirements specified in § 210.11 of this chapter.

[78 FR 39093, June 28, 2013]

## § 220.13 Special responsibilities of State agencies.

(a) [Reserved]

(a-1) Each State agency, or FNSRO where applicable, shall require each School Food Authority of a school participating in the School Breakfast Program to develop and file for approval a free and reduced price policy statement in accordance with paragraph (a) of § 220.7.

(b) **Records and reports.**

(1) Each State agency shall maintain Program records as necessary to support the reimbursement payments made to School Food Authorities under § 220.9 and the reports submitted to FNS under § 220.13(b)(2). The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of submission of the final Financial Status Report for the fiscal year, 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.

- (2) Each State agency shall submit to FNS a final Report of School Program Operations (FNS-10) for each month which shall be limited to claims submitted in accordance with § 220.11(b) and which shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FNS grants an exception. Upward adjustments to a State agency's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary. Adjustments shall be reported to FNS in accordance with procedures established by FNS. Each State agency shall also submit to FNS a quarterly Financial Status Report (FNS-777) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. A final Financial Status Report for each fiscal year shall be postmarked and/or submitted to FNS within 120 days after the end of the fiscal year. FNS shall not be responsible for reimbursing unpaid Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred.
- (3) For each of school years 2005-2006 through 2014-2015, each State agency shall monitor school food authority compliance with the food safety inspection requirement in § 220.7(a)(2) and submit an annual report to FNS documenting school compliance based on data supplied by the school food authorities. The report must be filed by November 15 following each of school years 2005-2006 through 2014-2015, beginning November 15, 2006. The State agency shall keep the records supplied by the school food authorities showing the number of food safety inspections obtained by schools for the current and three most recent school years.
- (c) Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of either program, and shall take appropriate action to correct any irregularities. State Agencies shall maintain on file evidence of such investigations and actions. FNS or OI shall make investigations at the request of the State Agency or where FNS or OI determines investigations are appropriate.
- (d) The State agency shall release to FNS any Federal funds made available to it under the Act which are unobligated at the end of each fiscal year. Any such funds shall remain available to FNS for the purposes of the programs authorized by the Act until expended. Release of funds by the State Agency shall be made as soon as practicable, but in any event not later than 30 days following demand by FNSRO and shall be reflected by related adjustment in the State Agency's Letter of Credit.
- (e) State agencies shall provide School Food Authorities with monthly information on foods available in plentiful supply, based on information provided by the Department.
- (f) Each State agency shall provide program assistance as follows:
  - (1) Each State agency or FNSRO where applicable shall provide consultative, technical, and managerial personnel to administer programs, monitor performance, and measure progress toward achieving program goals.
  - (2) State agencies must conduct administrative reviews of the school meal programs specified in § 210.18 of this chapter to ensure that schools participating in the designated programs comply with the provisions of this title. The reviews of selected schools must focus on compliance with the critical and general areas of review identified in § 210.18 for each program, as applicable, and must be conducted as specified in the FNS *Administrative Review Manual* for each program. School food authorities may appeal a denial of all or a part of the Claim for Reimbursement or withholding of

payment arising from review activity conducted by the State agency under § 210.18 of this chapter or by FNS under § 210.29(d)(2) of this chapter. Any such appeal shall be subject to the procedures set forth under § 210.18(p) of this chapter or § 210.29(d)(3) of this chapter, as appropriate.

- (3) For the purposes of compliance with the meal requirements in §§ 220.8 and 220.23, the State agency must follow the provisions specified in § 210.18(g) of this chapter, as applicable.
  - (4) State agency assistance must include visits to participating schools selected for administrative reviews under § 210.18 of this chapter to ensure compliance with program regulations and with the Department's nondiscrimination regulations (part 15 of this title), issued under title VI, of the Civil Rights Act of 1964.
  - (5) Documentation of such assistance shall be maintained on file by the State agency, or FNSRO where applicable.
- (g) State agencies shall adequately safeguard all assets and monitor resource management as required under § 210.18 of this chapter, and in conformance with the procedures specified in the FNS *Administrative Review Manual*, to assure that assets are used solely for authorized purposes.
- (h) [Reserved]
- (i) Each State agency, or FNS where applicable, shall establish a financial management system under which School Food Authorities shall account for all revenues and expenditures of their nonprofit school food service. The system shall prescribe the allowability of nonprofit school food service expenditures in accordance with this part and 2 CFR part 200, subpart D and E, as applicable, and USDA implementing regulations 2 CFR part 400 and part 415, as applicable. The system shall permit determination of school food service net cash resources, and shall include any criteria for approval of net cash resources in excess of three months average expenditures. In addition, School Food Authorities shall be required to account separately for other food services which are operated by the School Food Authority.
- (j) During audits, administrative reviews, or by other means, State agencies, or FNSROs where applicable, shall be responsible for monitoring the net cash resources of the nonprofit school food service of each School Food Authority participating in the Program. In the event that such resources exceed three months average expenditures for the School Food Authority's nonprofit school food service, or such amount as may be approved by the State agency or FNSRO where applicable, the State agency or FNSRO where applicable, may require the School Food Authority to reduce children's prices, improve food quality or take other actions designed to improve the nonprofit school food service. In the absence of any such action, adjustments in the rates of reimbursement under the Program shall be made.
- (k) State agencies shall require compliance by School Food Authorities with applicable provisions of this part.
- (l) ***Data collection related to school food authorities.***
- (1) Each State agency must collect data related to school food authorities that have an agreement with the State agency to participate in the program for each of Federal fiscal years 2006 through 2009, including those school food authorities that participated only for part of the fiscal year. Such data shall include:
    - (i) The name of each school food authority;
    - (ii) The city in which each participating school food authority was headquartered and the name of the state;

- (iii) The amount of funds provided to the participating organization, i.e., the amount of federal funds reimbursed to each participating school food authority; and
  - (iv) The type of participating organization, e.g., government agency, educational institution, non-profit organization/secular, non-profit organization/faith-based, and "other."
- (2) On or before August 31, 2007, and each subsequent year through 2010, State agencies must report to FNS data as specified in paragraph (l)(1) of this section for the prior Federal fiscal year. State agencies must submit this data in a format designated by FNS.
- (m) **Program evaluations.** States, State agencies, 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.

(44 U.S.C. 3506; sec. 812, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1759a); 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. 89-642, 80 Stat 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[32 FR 37, Jan. 5, 1967. Redesignated by Amdt. 2, 33 FR 14513, Sept. 27, 1968]

**Editorial Note:** For FEDERAL REGISTER citations affecting § 220.13, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

## § 220.14 Claims against school food authorities.

- (a) State agencies shall disallow any portion of a claim and recover any payment made to a School Food Authority that was not properly payable under this part. State agencies will use their own procedures to disallow claims and recover overpayments already made.
- (b) [Reserved]
- (c) The State agency may refer to CND through the FNSRO for determination any action it proposes to take under this section.
- (d) The State agency shall maintain all records pertaining to action taken under this section. Such records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain.
- (e) If CND does not concur with the State agency's action in paying a claim or a reclaim, or in failing to collect an overpayment, CND shall assert a claim against the State agency for the amount of such claim, reclaim, or overpayment. In all such cases the State agency shall have full opportunity to submit to CND evidence or information concerning the action taken. If, in the determination of CND, the State agency's action was unwarranted, the State agency shall promptly pay to FNS the amount of the claim, reclaim, or overpayment.
- (f) The amounts recovered by the State agency from Schools may be utilized, first, to make payments to School Food Authorities for the purposes of the related program during the fiscal year for which the funds were initially available, and second to repay any State funds expended in the reimbursement of claims under the program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this part.

- (g) With respect to School Food Authorities of schools in which the program is administered by FNSRO, when FNSRO disallows a claim or a portion of a claim, or makes a demand for refund of an alleged overpayment, it shall notify the School Food Authority of the reasons for such disallowance or demand and the School Food Authority shall have full opportunity to submit evidence or to file reclaims for any amounts disallowed or demanded in the same manner as that afforded in this section to School Food Authorities of schools in which the program is administered by State agencies.
- (h) In the event that the State agency or FNSRO, where applicable, finds that a school food authority is failing to meet the requirements of § 220.8 of this part, the State agency or FNSRO need not disallow payment or collect an overpayment arising out of such failure, if the State agency or FNSRO takes such other action as, in its opinion, will have a corrective effect.
- (i) The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

(44 U.S.C. 3506; secs. 804, 816 and 817, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785))

[32 FR 37, Jan. 5, 1967. Redesignated by Amdt. 2, 33 FR 14513, Sept. 27, 1968, and amended by Amdt. 9, 37 FR 9614, May 13, 1972; 40 FR 30925, July 24, 1975. Redesignated and amended by Amdt. 25, 41 FR 34757, 34760, Aug. 17, 1976; 47 FR 746, Jan. 7, 1982; Amdt. 42, 47 FR 14134, Apr. 2, 1982; 60 FR 31222, June 13, 1995; 65 FR 26931, May 9, 2000; 81 FR 50194, July 29, 2016]

## § 220.15 Management evaluations and audits.

- (a) Unless otherwise exempt, audits at the State and institution levels shall be conducted in accordance with 2 CFR part 200, subpart F and Appendix XI, Compliance Supplement, and USDA implementing regulations 2 CFR part 400 and part 415.
- (b) Each State agency shall provide FNS with full opportunity to conduct management evaluations (including visits to schools) of all operations of the State agency under the programs covered by this part and shall provide OIG with full opportunity to conduct audits (including visits to schools) of all operations of the State agency under such programs. Each State agency shall make available its records, including records of the receipt and expenditure of funds under such programs, upon a reasonable request by FNS or OIG. OIG shall also have the right to make audits of the records and operations of any school.
- (c) In conducting management evaluations, reviews, or audits in a fiscal year, the State agency, FNS, or OIG may disregard an overpayment if the overpayment does not exceed \$600. A State agency may establish, through State law, regulation or procedure, an alternate disregard threshold that does not exceed \$600. This disregard may be made once per each management evaluation, review, or audit per Program within a fiscal year. However, no overpayment is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

(Secs. 805 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773); sec. 812, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1759a))

[40 FR 30925, July 24, 1975. Redesignated and amended by Amdt. 25, 41 FR 34757, 34760, Aug. 17, 1976; 43 FR 59825, Dec. 22, 1978; Amdt. 41, 47 FR 14135, Apr. 2, 1982; Amdt. 43, 47 FR 18564, Apr. 30, 1982; Amdt. 56, 54 FR 2990, Jan. 23, 1989; 57 FR 38587, Aug. 26, 1992; 59 FR 1894, Jan. 13, 1994; 64 FR 50742, Sept. 20, 1999; 71 FR 30563, May 30, 2006; 71 FR 39517, July 13, 2006; 81 FR 66491, Sept. 28, 2016]

## § 220.16 Procurement standards.

- (a) **General.** State agencies and school food authorities shall comply with the requirements of this part 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, as applicable, which implement the applicable Office of Management and Budget Circulars, concerning the procurement of all goods and services with nonprofit school food service account funds.
- (b) **Contractual responsibilities.** The standards contained in 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, as applicable, do not relieve the State agency or School Food Authority of any contractual responsibilities under its contract. The State agency or School Food Authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes but is not limited to: Source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State or Federal authority that has proper jurisdiction.
- (c) **Procedures.** The State agency may elect to follow either the State laws, policies and procedures as authorized by 2 CFR 200.317, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with 2 CFR 200.318 through 2 CFR 200.326. Regardless of the option selected, States must ensure that all contracts include any clauses required by Federal statutes and executive orders and that the requirements of 2 CFR 200.326 are followed. The school food authority may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with nonprofit school food service account funds adhere to the standards set forth in this part 2 CFR 200.326 and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Award as applicable. School food authority procedures must include a written code of standards of conduct meeting the minimum standards of 2 CFR 200.318, as applicable.
- (1) **Pre-issuance review requirement.** The State agency may impose a pre-issuance review requirement on a school food authority's proposed procurement. The school food authority must make available, upon request of the State agency, its procurement documents, including but not limited to solicitation documents, specifications, evaluation criteria, procurement procedures, proposed contracts and contract terms. School food authorities shall comply with State agency requests for changes to procurement procedures and solicitation and contract documents to ensure that, to the State agency's satisfaction, such procedures and documents reflect applicable procurement and contract requirements and the requirements of this part.
- (2) **Prototype solicitation documents and contracts.** The school food authority must obtain the State agency's prior written approval for any change made to prototype solicitation or contract documents before issuing the revised solicitation documents or execution of the revised contract.
- (3) **Prohibited expenditures.** No expenditure may be made from the nonprofit school food service account for any cost resulting from a procurement failing to meet the requirements of this part.
- (d) **Buy American –**
- (1) **Definition of domestic commodity or product.** In this paragraph (d), the term “domestic commodity or product” means–

- (i) An agricultural commodity that is produced in the United States; and
- (ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(2) **Requirement** –

- (i) **In general.** Subject to paragraph (d)(2)(ii) of this section, the Department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.
- (ii) **Limitations.** Paragraph (d)(2)(i) of this section shall apply only to—
  - (A) A school food authority located in the contiguous United States; and
  - (B) A purchase of domestic commodity or product for the school breakfast program under this part.

(3) **Applicability to Hawaii.** Paragraph (d)(2)(i) of this section shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school breakfast program under this part.

(e) **Cost reimbursable contracts** –

- (1) **Required provisions.** The school food authority must include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:
  - (i) Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;
  - (ii)
    - (A) The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account), or;
    - (B) The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;
  - (iii) The contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;
  - (iv) The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;



- (v) The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and
- (vi) The contractor must maintain documentation of costs and discounts, rebates, and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

(2) **Prohibited expenditures.** No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.

(f) **Geographic preference.**

- (1) School food authorities participating in the Program, as well as State agencies making purchases on behalf of such school food authorities, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the school food authority making the purchase or the State agency making purchases on behalf of such school food authorities have the discretion to determine the local area to which the geographic preference option will be applied;
- (2) For the purpose of applying the optional geographic preference in paragraph (f)(1) of this section, "unprocessed locally grown or locally raised agricultural products" means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

(Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 45, 48 FR 19355, Apr. 29, 1983, as amended at 64 FR 50743, Sept. 20, 1999; 71 FR 39517, July 13, 2006; 72 FR 61494, Oct. 31, 2007; 76 FR 22607, Apr. 22, 2011; 81 FR 66491, Sept. 28, 2016]

## § 220.17 Prohibitions.

- (a) In carrying out the provisions of this part, the Department shall not impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, and materials of instruction in any school as a condition for participation in the Program.

- (b) The value of assistance to children under the Act shall not be considered to be income or resources for any purposes under any Federal or State laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditure of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act.

[32 FR 37, Jan. 5, 1967. Redesignated by Amdt. 2, 33 FR 14513, Sept. 27, 1968. Redesignated and amended by Amdt. 25, 41 FR 34757, 34760, Aug. 17, 1976; 64 FR 50743, Sept. 20, 1999]

## § 220.18 Withholding payments and establishing fines.

- (a) **Withholding payments.** In accordance with 2 CFR 200.338 through 342, the State agency must withhold Program payments, in whole or in part, from any school food authority which has failed to comply with the provisions of this part. Program payments must be withheld until the school food authority takes corrective action that is satisfactory to the State agency, or gives evidence that such corrective actions will be taken, or until the State agency terminates the grant in accordance with § 220.19. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any breakfasts served in accordance with the provisions of this part during the period the payments were withheld.

- (b) **Fines.**

- (1) The State agency may establish a fine against any school food authority when it has determined that the school food authority or a school under its agreement has:
  - (i) Failed to correct severe mismanagement of the Program or a Child Nutrition Program under parts 225 or 226 of this chapter;
  - (ii) Disregarded a Program requirement of which the school food authority or school had been informed; or
  - (iii) Failed to correct repeated violations of Program requirements under this part or under parts 225 or 226 of this chapter.
- (2) FNS may direct the State agency to establish a fine against any school food authority when it has determined that the school food authority or school meets the criteria set forth under paragraph (b)(1) of this section.
- (3) Funds used to pay a fine established under this paragraph must be derived from non-Federal sources. The State agency must calculate the fine based on the amount of Program reimbursement earned by the school food authority or school for the most recent fiscal year for which full year data are available, provided that the fine does not exceed the equivalent of:
  - (i) For the first fine, 1 percent of the amount of meal reimbursement earned for the fiscal year;
  - (ii) For the second fine, 5 percent of the amount of meal reimbursement earned for the fiscal year; and
  - (iii) For the third or subsequent fine, 10 percent of the amount of meal reimbursement earned for the fiscal year.
- (4) The State agency must inform FNS at least 30 days prior to establishing a fine under this paragraph. The State agency must send the school food authority written notification of the fine established under this paragraph and provide a copy of the notification to FNS. The notification must:

- (i) Specify the violations or actions which constitute the basis for the fine and indicate the amount of the fine;
  - (ii) Inform the school food authority that it may appeal the fine, and advise the school food authority of the appeal procedures established under § 210.18(p) of this chapter;
  - (iii) Indicate the effective date and payment procedures should the school food authority not exercise its right to appeal within the specified timeframe.
- (5) Any school food authority subject to a fine under paragraph (b)(1) of this section may appeal the State agency's determination. In appealing a fine, the school food authority must submit to the State agency any pertinent information, explanation, or evidence addressing the Program violations identified by the State agency. Any school food authority seeking to appeal the State agency determination must follow State agency appeal procedures.
- (6) The decision of the State agency review official is final and not subject to further administrative or judicial review. Failure to pay a fine established under this paragraph may be grounds for suspension or termination.
- (7) Money received by the State agency as a result of a fine established under this paragraph against a school food authority and any interest charged in the collection of these fines must be remitted to FNS, and then remitted to the United States Treasury.

[88 FR 57849, Aug. 23, 2023]

### **§ 220.19 Suspension, termination and grant closeout procedures.**

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FNS. FNS and the State agency shall comply with the provisions of 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 subparts B and D and USDA implementing regulations 2 CFR part 400 and part 415 concerning grant suspension, termination and closeout procedures. Furthermore, the State agency or FNSRO were applicable, shall apply these provisions to suspension or termination of the Program in School Food Authorities.

[Amdt. 49, 49 FR 18988, May 4, 1984, as amended at 71 FR 39517, July 13, 2006. Redesignated at 72 FR 61495, Oct. 31, 2007, as amended at 81 FR 66491, Sept. 28, 2016]

### **§ 220.20 Free and reduced price breakfasts.**

The determination of the children to whom free and reduced price breakfasts are to be served because of inability to pay the full price thereof, and the serving of the breakfasts to such children, shall be effected in accordance with part 245 of this chapter.

[Amdt. 25, 41 FR 34760, Aug. 17, 1976. Redesignated at 72 FR 61495, Oct. 31, 2007]

### § 220.21 Program information.

Persons seeking information about this Program should contact their State administering agency or the appropriate FNSRO. The FNS website has contact information for State agencies at <https://www.fns.usda.gov/contacts> and FNSROs at <https://www.fns.usda.gov/fns-regional-offices>.

[88 FR 57849, Aug. 23, 2023]

### § 220.22 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control No.
220.3(e)	0584-0067
220.7(a),(d), (e)	0584-0012
220.8(a)(3), (o)	0584-0012
220.9(a)	0584-0012
220.11 (a)-(b)	0584-0012
220.13 (a-1), (b), (c), (e), (f)	0584-0012 0584-0594
220.14(d)	0584-0012
220.15	0584-0012

[81 FR 50194, July 29, 2016]

### § 220.23 Seamless Summer Option non-congregate meal service.

A school food authority participating in the National School Lunch Program's Seamless Summer Option, and which is approved to offer a non-congregate meal service, must comply with the provisions specified in § 210.34 of this chapter.

[88 FR 90347, Dec. 29, 2023]

## Appendix A to Part 220—Alternate Foods for Meals

### Alternate Protein Products

#### A. What Are the Criteria for Alternate Protein Products Used in the School Breakfast Program?

1. An alternate protein product used in meals planned under the food-based menu planning approaches in § 220.8(g), must meet all of the criteria in this section.
2. An alternate protein product whether used alone or in combination with meat or other meat alternates must meet the following criteria:

- a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.
- b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).
- c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. ("When hydrated or formulated" refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).
- d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs A.2. a through c of this appendix.
- e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.
- f. For an alternate protein product mix, manufacturers should provide information on:
  - (1) The amount by weight of dry alternate protein product in the package;
  - (2) Hydration instructions; and
  - (3) instructions on how to combine the mix with meat or other meat alternates.

## B. How Are Alternate Protein Products Used in the School Breakfast Program?

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in § 220.8. The following terms and conditions apply:
  - a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.
  - b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

## C. How Are Commercially Prepared Products Used in the School Breakfast Program?

Schools, institutions, and service institutions may use a commercially prepared meat or other meat alternate products combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

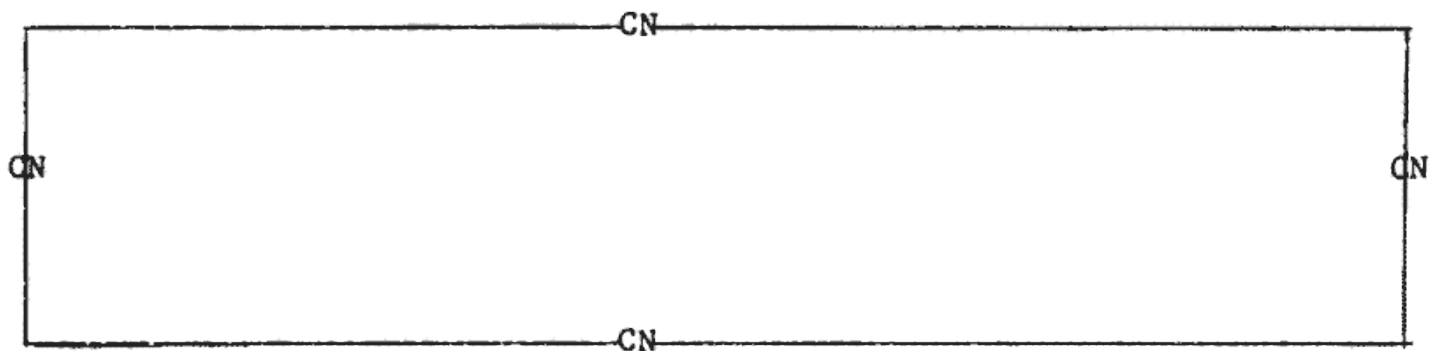
(Secs. 804, 816, 817, and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, 1773 and 1785))

[Amdt. 18, 39 FR 11249, Mar. 27, 1974, as amended at 40 FR 37027, Aug. 25, 1975; Amdt. 45, 48 FR 195, Jan. 4, 1983; Amdt. 57, 54 FR 13048, Mar. 30, 1989; 60 FR 31222, June 13, 1995; 65 FR 12436, Mar. 9, 2000; 65 FR 26923, May 9, 2000. Redesignated at 72 FR 61495, Oct. 31, 2007; 77 FR 4167, Jan. 26, 2012]

## Appendix B to Part 220 [Reserved]

## Appendix C to Part 220—Child Nutrition (CN) Labeling Program

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS) in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.
2. Products eligible for CN labels are as follows:
  - (a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10 or 210.10a, whichever is applicable, 225.21, and 226.20 and are served in the main dish.
  - (b) Juice drinks and juice drink products that contain a minimum of 50 percent full-strength juice by volume.
3. For the purpose of this appendix the following definitions apply:
  - (a) "CN label" is a food product label that contains a CN label statement and CN logo as defined in paragraph 3 (b) and (c) below.
  - (b) The "CN logo" (as shown below) is a distinct border which is used around the edges of a "CN label statement" as defined in paragraph 3(c).

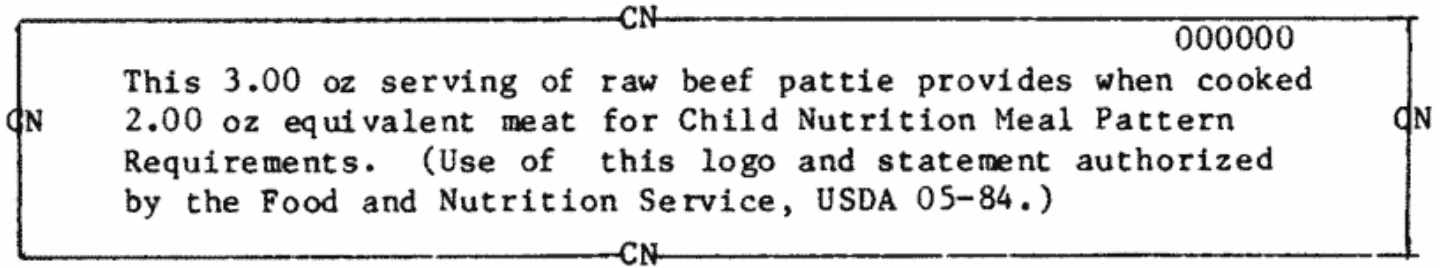


- (c) The "CN label statement" includes the following:
  - (1) The product identification number (assigned by FNS),
  - (2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10 or 210.10a, whichever is applicable, 220.8, 225.21, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat

alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements,

- (3) Statement specifying that the use of the CN logo and CN statement was authorized by FNS, and
- (4) The approval date.

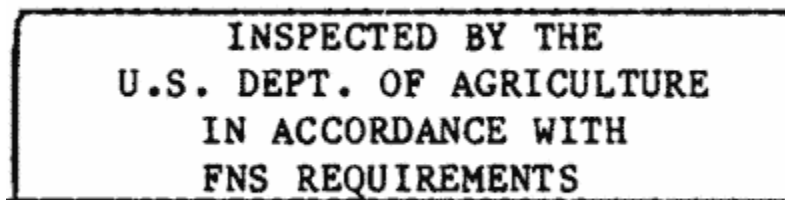
For example:



(d) **Federal inspection** means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

- (a) The CN label must be reviewed and approved at the national level by the Food and Nutrition Service and appropriate USDA or USDC Federal agency responsible for the inspection of the product.
- (b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.
- (c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate, and the manufacturer's or distributor's name and address.
  - (1) The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:



(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the *Food Buying Guide for Child Nutrition Programs* (Program Aid Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the child nutrition programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10 or 210.10a, whichever is applicable, 220.8, 225.21, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FNS. FNS will prepare a report of the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Services of the USDC, Food and Drug Administration, or the Department of Justice for action against the company.

Any or all of the following courses of action may be taken:

- (a) The company's CN label may be revoked for a specific period of time;
  - (b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product;
  - (c) The company's name will be circulated to regional FNS offices;
  - (d) FNS will require the food service program involved to notify the State agency of the labeling violation.
7. FNS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program.

To apply for a CN label and to obtain additional information on CN label application procedures write to: CN Labels, U.S. Department of Agriculture, Food and Nutrition Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

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

[49 FR 18457, May 1, 1984; 49 FR 45109, Nov. 15, 1984; 60 FR 31222, June 13, 1995; 65 FR 26923, May 9, 2000]