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APPENDIX A TO PART 226—ALTERNATE FOODS FOR MEALS

APPENDIX B TO PART 226 [RESERVED]

APPENDIX C TO PART 226—CHILD NUTRITION (CN) LABELING PROGRAM

AUTHORITY: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

SOURCE: 47 FR 36527, Aug. 20, 1982, unless otherwise noted.

**Subpart A—General**

**§ 226.1 General purpose and scope.**

This part announces the regulations under which the Secretary of Agriculture will carry out the Child and Adult Care Food Program. Section 17 of the National School Lunch Act, as amended, authorizes assistance to States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children or adult participants in nonresidential institutions which provide care. The Program is intended to enable such institutions to integrate a nutritious food service with organized care services for enrolled participants. Payments will be made to State agencies or FNS Regional Offices to enable them to reimburse institutions for food service to enrolled participants.

[53 FR 52587, Dec. 28, 1988, as amended by Amdt. 22, 55 FR 1377, Jan. 14, 1990]

**§ 226.2 Definitions.**

*AFDC assistance unit* means any individual or group of individuals which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income eligibility guidelines for free meals under this part.

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

*Administrative costs* means costs incurred by an institution related to planning, organizing, and managing a food service under the Program, and allowed by the State agency financial management instruction. These administrative costs may include administrative expenses associated with outreach and recruitment of unlicensed family or group day care homes and the allowable licensing-related expenses of such homes.

*Administrative review* means the fair hearing provided upon request to:

(a) An institution that has been given notice by the State agency of any action or proposed action that will affect their participation or reimbursement under the Program, in accordance with § 226.6(k);

(b) A principal or individual responsible for an institution's serious deficiency after the responsible principal or responsible individual has been given a notice of intent to disqualify them from the Program; and

(c) A day care home that has been given a notice of proposed termination for cause.

*Administrative review official* means the independent and impartial official who conducts the administrative review held in accordance with § 226.6(k).

*Adult* means, for the purposes of the collection of social security numbers as a condition of eligibility for free or reduced-price meals, any individual 21 years of age or older.

*Adult day care center* means any public or private nonprofit organization or any proprietary title XIX or title XX center (as defined in this section) which (a) is licensed or approved by Federal, State or local authorities to provide nonresidential adult day care services to functionally impaired adults (as defined in this section) or persons 60 years of age or older in a group setting outside their homes or a group living arrangement on a less than 24-hour basis and (b) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services. Such centers shall provide a structured, comprehensive program that provides a variety of health, social

and related support services to enrolled adult participants through an individual plan of care.

*Adult day care facility* means a licensed or approved adult day care center under the auspices of a sponsoring organization.

*Adult participant* means a person enrolled in an adult day care center who is functionally impaired (as defined in this section) or 60 years of age or older.

*Advanced payments* means financial assistance made available to an institution for its Program costs prior to the month in which such costs will be incurred.

*CACFP child care standards* means the Child and Adult Care Food Program child care standards developed by the Department for alternate approval of child care centers, outside-school-hours care centers, and day care homes by the State agency under the provisions of § 226.6(d)(2) and (3).

*Center* means a child care center, an adult day care center, or an outside-school-hours care center.

*Child care center* means any public or private nonprofit organization, or any proprietary title XX center, as defined in this section (“Proprietary title XX center”), licensed or approved to provide nonresidential child care services to enrolled children, primarily of pre-school age, including but not limited to day care centers, settlement houses, neighborhood centers, Head Start centers and organizations providing day care services for children with handicaps. Child care centers may participate in the Program as independent centers or under the auspices of a sponsoring organization.

*Child care facility* means a licensed or approved child care center, day care home, or outside-school-hours care center under the auspices of a sponsoring organization.

*Children* means (a) persons 12 years of age and under, (b) children of migrant workers 15 years of age and under, and (c) persons with mental or physical handicaps, as defined by the State, enrolled in an institution or a child care facility serving a majority of persons 18 years of age and under.

*Claiming percentage* means the ratio of the number of enrolled participants in an institution in each reimburse-

ment category (free, reduced-price or paid) to the total of enrolled participants in the institution.

*Current income* means income received during the month prior to application for free or reduced-price meals. If such income does not accurately reflect the household’s annual income, income shall be based on the projected annual household income. If the prior year’s income provides an accurate reflection of the household’s current annual income, the prior year may be used as a base for the projected annual income.

*Day care home* means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

*Days* means calendar days unless otherwise specified.

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

*Disclosure* means individual children’s program eligibility information obtained through the free and reduced price meal eligibility process that is revealed or used for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

*Disqualified* means the status of an institution, a responsible principal or responsible individual, or a day care home that is ineligible for participation.

*Documentation* means:

(a) The completion of the following information on a free and reduced-price application:

- (1) Names of all household members;
- (2) Income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income);
- (3) The signature of an adult household member; and
- (4) The social security number of the adult household member who signs the application, or an indication that he/

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she does not possess a social security number; or

(b) For a child who is a member of a food stamp or FDPIR household or an AFDC assistance unit, “documentation” means the completion of only the following information on a free and reduced price application:

(1) The name(s) and appropriate food stamp, FDPIR or AFDC case number(s) for the child(ren); and

(2) The signature of an adult member of the household; or

(c) For a child in a tier II day care home who is a member of a household participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free or reduced price meals:

(1) The name(s), appropriate case number(s) (if the program utilizes case numbers), and name(s) of the qualifying program(s) for the child(ren), and the signature of an adult member of the household; or

(2) If the sponsoring organization or day care home possesses it, official evidence of the household’s participation in a qualifying program (submission of a free and reduced price application by the household is not required in this case); or

(d) For an adult participant who is a member of a food stamp or FDPIR household or is an SSI or Medicaid participant, as defined in this section, “documentation” means the completion of only the following information on a free and reduced price application:

(1) The name(s) and appropriate food stamp or FDPIR case number(s) for the participant(s) or the adult participant’s SSI or Medicaid identification number, as defined in this section; and

(2) The signature of an adult member of the household; or

(e) For a child who is a Head Start participant, the Head Start statement of income eligibility issued upon initial enrollment in the Head Start Program or, if such statement is unavailable, other documentation from Head Start officials that the child’s family meets the Head Start Program’s low-income criteria.

*Emergency shelter* means a public or private nonprofit organization whose

primary purpose is to provide temporary shelter and food services to homeless families with children.

*Enrolled child* means a child whose parent or guardian has submitted to an institution a signed document which indicates that the child is enrolled for child care. In addition, for the purposes of calculations made by sponsoring organizations of family day care homes in accordance with §§ 226.13(d)(3)(ii) and 226.13(d)(3)(iii), “enrolled child” (or “child in attendance”) means a child whose parent or guardian has submitted a signed document which indicates that the child is enrolled for child care; who is present in the day care home for the purpose of child care; and who has eaten at least one meal during the claiming period.

*Enrolled participant* means an “Enrolled child” (as defined in this section) or “Adult participant” (as defined in this section).

*Expansion payments* means financial assistance made available to a sponsoring organization for its administrative expenses associated with expanding a food service program to day care homes located in low-income or rural areas. These expansion payments may include administrative expenses associated with outreach and recruitment of unlicensed family or group day care homes and the allowable licensing-related expenses of such homes.

*Facility* means a sponsored center or a family day care home.

*Family* means, in the case of children, a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit or, in the case of adult participants, the adult participant, and if residing with the adult participant, the spouse and dependent(s) of the adult participant.

*FDPIR household* means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Distribution Program on Indian Reservations.

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

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

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

*Food service equipment assistance* means Federal financial assistance formerly made available to State agencies to assist institutions in the purchase or rental of equipment to enable institutions to establish, maintain or expand food service under the Program.

*Food service management company* means an organization other than a public or private nonprofit school, with which an institution may contract for preparing and, unless otherwise provided for, delivering meals, with or without milk for use in the Program.

*Food Stamp household* means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

*Free meal* means a meal served under the Program to a participant from a family which meets the income standards for free school meals; or to a child who is automatically eligible for free meals by virtue of food stamp, FDPIR, or AFDC reciprocity; or to a child who is a Head Start participant; or to an adult participant who is automatically eligible for free meals by virtue of food stamp or FDPIR reciprocity or is a SSI or Medicaid participant. Regardless of whether the participant qualified for free meals by virtue of meeting one of the criteria of this definition, neither the participant nor any member of their family shall be required to pay or to work in the food service program in order to receive a free meal.

*Functionally impaired adult* means chronically impaired disabled persons 18 years of age or older, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, who are physically or mentally impaired to the extent that their capacity for independence and their ability to carry out activities of daily living is markedly limited. Activities of daily living include, but are not limited to, adaptive activities such as cleaning, shopping, cooking, taking public transportation, maintaining a residence, caring appropriately for one's grooming or hygiene, using telephones and directories, or using a post office. Marked limitations refer to the

severity of impairment, and not the number of limited activities, and occur when the degree of limitation is such as to seriously interfere with the ability to function independently.

*Group living arrangement* means residential communities which may or may not be subsidized by federal, State or local funds but which are private residences housing an individual or a group of individuals who are primarily responsible for their own care and who maintain a presence in the community but who may receive on-site monitoring.

*Household* means "family", as defined in § 226.2 ("Family").

*Head Start participant* means a child currently receiving assistance under a Federally-funded Head Start Program who is categorically eligible for free meals in the CACFP by virtue of meeting Head Start's low-income criteria.

*Income standards* means the family-size and income standards prescribed annually by the Secretary for determining eligibility for free and reduced-price meals under the National School Lunch Program and the School Breakfast Program.

*Income to the program* means any funds used in an institution's food service program, including, but not limited to all monies, other than Program payments, received from other Federal, State, intermediate, or local government sources; participant's payments for meals and food service fees; income from any food sales to adults; and other income, including cash donations or grants from organizations or individuals.

*Independent center* means a child care center, outside-school-hours care center or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

*Infant cereal* means any iron-fortified dry cereal specially formulated for 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 formula intended for dietary use

solely as a food for normal, healthy infants; excluding those formulas specifically formulated for infants with in-born errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

*Institution* means a sponsoring organization, child care center, outside-school-hours care center, emergency shelter or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

*Internal controls* means the policies, procedures, and organizational structure of an institution designed to reasonably assure that:

(a) The Program achieves its intended result;

(b) Program resources are used in a manner that protects against fraud, abuse, and mismanagement and in accordance with law, regulations, and guidance; and

(c) Timely and reliable Program information is obtained, maintained, reported, and used for decision-making.

*Key Element Reporting System (KERS)* means a comprehensive national system for reporting critical key element performance data on the operation of the program in institutions.

*Low-income area* means a geographical area in which at least 50 percent of the children are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined in accordance with paragraphs (b) and (c), definition of tier I day care home.

*Meals* means food which is served to enrolled participants at an institution, child care facility or adult day care facility and which meets the nutritional requirements set forth in this part.

*Medicaid* means *Title XIX* of the Social Security Act.

*Medicaid participant* means an adult participant who receives assistance under title XIX of the Social Security Act, the Grant to States for Medical Assistance Programs—Medicaid.

*Milk* means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local

standards for such milk, except that, in the meal pattern for infants (0 to 1 year of age), milk means breast milk or iron-fortified infant formula. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands if a sufficient supply of such types of fluid milk cannot be obtained, “milk” shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and be consistent with State and local standards for such milk.

*National disqualified list* means the list, maintained by the Department, of institutions, responsible principals and responsible individuals, and day care homes disqualified from participation in the Program.

*New institution* means an institution applying to participate in the Program for the first time, or an institution applying to participate in the Program after a lapse in participation.

*Nonpricing program* means an institution in which there is no separate identifiable charge made for meals served to participants.

*Nonprofit food service* means all food service operations conducted by the institution principally for the benefit of enrolled participants, from which all of the Program reimbursement funds are used solely for the operations or improvement of such food service.

*Nonresidential* means that the same participants are not maintained in care for more than 24 hours on a regular basis.

*Notice* means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a State agency or FNS with regard to an institution's Program reimbursement or participation. Notice also means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a sponsoring organization with regard to a day care home's participation. The notice must specify the action being proposed or taken and the basis for the action, and is considered

to be received by the institution or day care home when it is delivered, sent by facsimile, or sent by email. If the notice is undeliverable, it is considered to be received by the institution, responsible principal or responsible individual, or day care home five days after being sent to the addressee's last known mailing address, facsimile number, or email address.

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

*Operating costs* means expenses incurred by an institution in serving meals to participants under the Program, and allowed by the State agency financial management instruction.

*Outside-school-hours care center* means a public or private nonprofit organization, or a proprietary title XX center, as defined in this section ("Proprietary title XX center"), licensed or approved to provide organized nonresidential child care services to enrolled children outside of school hours. Outside-school-hours care centers may participate in the Program as independent centers or under the auspices of a sponsoring organization.

*Participants* means "Children" or "Adult participants" as defined in this section.

*Personal property* means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence such as patents, inventions, and copyrights.

*Pricing program* means an institution in which a separate identifiable charge is made for meals served to participants.

*Principal* means any individual who holds a management position within, or is an officer of, an institution or a sponsored center, including all members of the institution's board of directors or the sponsored center's board of directors.

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

*Program payments* means financial assistance in the form of start-up payments, expansion payments, advance payments, or reimbursement paid or payable to institutions for operating costs and administrative costs.

*Proprietary title XIX center* means any private, for profit center (a) providing nonresidential adult day care services for which it receives compensation from amounts granted to the States under title XIX of the Social Security Act and (b) in which title XIX beneficiaries were not less than 25 percent of enrolled eligible participants in the calendar month preceding initial application or annual reapplication for Program participation.

*Proprietary title XX center* means any private, for profit center:

(a) Providing nonresidential child care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act, and in which title XX child care beneficiaries constitute no less than 25 percent of enrolled eligible participants or licensed capacity, whichever is less, during the calendar month preceding initial application or annual reapplication for Program participation; or,

(b) Providing nonresidential adult day care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act and in which adult beneficiaries were not less than 25 percent of enrolled eligible participants during the calendar month preceding initial application or annual reapplication for Program participation.

*Reduced-price meal* means a meal served under the Program to a participant from a family which meets the income standards for reduced-price school meals. Any separate charge imposed shall be less than the full price of the meal, but in no case more than 40 cents for a lunch or supper, 30 cents for a breakfast, and 15 cents for a supplement, and for which neither the participant nor any member of his family is required to work in the food service program.

*Reimbursement* means Federal financial assistance paid or payable to institutions for Program costs within the rates assigned by the State agency.

*Renewing institution* means an institution that is participating in the Program at the time it submits a renewal application.

*Responsible principal or responsible individual* means:

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(a) A principal, whether compensated or uncompensated, who the State agency or FNS determines to be responsible for an institution's serious deficiency;

(b) Any other individual employed by, or under contract with, an institution or sponsored center, who the State agency or FNS determines to be responsible for an institution's serious deficiency; or

(c) An uncompensated individual who the State agency or FNS determines to be responsible for an institution's serious deficiency.

*Rural area* means any geographical area in a county which is not a part of a Metropolitan Statistical Area or any "pocket" within a Metropolitan Statistical Area which, at the option of the State agency and with FNSRO concurrence, is determined to be geographically isolated from urban areas.

*SSI participant* means an adult participant who receives assistance under title XVI of the Social Security Act, the Supplemental Security Income (SSI) for the Aged, Blind and Disabled Program.

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

*Seriously deficient* means the status of an institution or a day care home that has been determined to be non-compliant in one or more aspects of its operation of the Program.

*Sponsoring organization* means a public or nonprofit private organization which is entirely responsible for the administration of the food program in: (a) One or more day care homes; (b) a child care center, outside-school-hours care centers, or adult day care center which is a legally distinct entity from the sponsoring organization; (c) two or more child care centers, outside-school-hours care centers, or adult day care centers; or (d) any combination of child care centers, adult day care centers, day care homes, and outside-school-hours care centers. The term "sponsoring organization" also includes a for-profit organization which is entirely responsible for administration of the Program in any combination of two or more child care centers, adult day care centers and outside-school-hours care centers which are

part of the same legal entity as the sponsoring organization, and which are proprietary title XIX or XX centers, as defined in this section ("Proprietary Title XIX center", "Proprietary Title XX center").

*Start-up payments* means financial assistance made available to a sponsoring organization for its administrative expenses associated with developing or expanding a food service program in day care homes and initiating successful Program operations. These start-up payments may include administrative expenses associated with outreach and recruitment of unlicensed family or group day care homes and the allowable licensing-related expenses of such homes.

*State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

*State agency* means the State educational agency or any other State agency that has been designated by the Governor or other appropriate executive, or by the legislative authority of the State, and has been approved by the Department to administer the Program within the State or in States in which FNS administers the Program, FNSRO. This also may include a State agency other than the existing CACFP State Agency, when such agency is designated by the Governor of the State to administer only the adult day care component of the CACFP.

*State agency list* means an actual paper or electronic list, or the retrievable paper records, maintained by the State agency, that includes a synopsis of information concerning seriously deficient institutions and providers terminated for cause in that State. The list must be made available to FNS upon request, and must include the following information:

(a) Institutions determined to be seriously deficient by the State agency, including the names and mailing addresses of the institutions, the basis for each serious deficiency determination, and the status of the institutions as

they move through the possible subsequent stages of corrective action, proposed termination, suspension, agreement termination, and/or disqualification, as applicable;

(b) Responsible principals and responsible individuals who have been disqualified from participation by the State agency, including their names, mailing addresses, and dates of birth; and

(c) Day care home providers whose agreements have been terminated for cause by a sponsoring organization in the State, including their names, mailing addresses, and dates of birth.

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

*Suspended* means the status of an institution or day care home that is temporarily ineligible for participation (including Program payments).

*Suspension review* means the review provided, upon the institution's request, to an institution that has been given a notice of intent to suspend participation (including Program payments), based on a determination that the institution has knowingly submitted a false or fraudulent claim.

*Suspension review official* means the independent and impartial official who conducts the suspension review.

*Termination for cause* means the termination of a day care home's Program agreement by the sponsoring organization due to the day care home's violation of the agreement.

*Termination for convenience* means termination of a day care home's Program agreement by either the sponsoring organization or the day care home, due to considerations unrelated to either party's performance of Program responsibilities under the agreement.

*Tier I day care home* means (a) a day care home that is operated by a provider whose household meets the income standards for free or reduced-price meals, as determined by the sponsoring organization based on a completed free and reduced price application, and whose income is verified by the sponsoring organization of the home in accordance with § 226.23(h)(6);

(b) A day care home that is located in an area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price meals; or

(c) A day care home that is located in a geographic area, as defined by FNS based on census data, in which at least 50 percent of the children residing in the area are members of households which meet the income standards for free or reduced price meals.

*Tier II day care home* means a day care home that does not meet the criteria for a *Tier I day care home*.

*Title XVI* means Title XVI of the Social Security Act which authorizes the Supplemental Security Income for the Aged, Blind, and Disabled Program—SSI.

*Title XIX* means Title XIX of the Social Security Act which authorizes the Grants to States for Medical Assistance Programs—Medicaid.

*Title XX* means Title XX of the Social Security Act.

*Unannounced review* means an on-site review for which no prior notification is given to the facility or institution.

*Uniform Federal Assistance Regulations* means the Department's regulations, 7 CFR part 3015, establishing Department-wide policies and standards for administration of grants and cooperative agreements.

*Verification* means a review of the information reported by institutions to the State agency regarding the eligibility of participants for free or reduced-price meals, and, in addition, for a pricing program, confirmation of eligibility for free or reduced-price benefits under the program. Verification for a pricing program shall include confirmation of income eligibility and, at State discretion, any other information required on the application which is defined as documentation in § 226.2. Such verification may be accomplished by examining information (e.g., wage stubs, etc.) provided by the household or other sources of information as specified in § 226.23(h)(2)(iv). However, if a food stamp, FDPIR or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp or

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FDPIR household or AFDC assistance unit. If a Head Start statement of income eligibility is provided for a child, verification for such child shall include only confirmation that the child is a Head Start participant. For an adult participant, if a food stamp or FDPIR case number or SSI or Medicaid assistance identification number is provided, verification for such participant shall include only confirmation that the participant is included in a currently certified food stamp or FDPIR household or is a current SSI or Medicaid participant.

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

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 48 FR 21529, May 13, 1983; 48 FR 41142, Sept. 14, 1983; 50 FR 19310, May 8, 1985; 51 FR 31316, Sept. 3, 1986; 52 FR 36906, Oct. 2, 1987; 53 FR 52587, Dec. 28, 1988; 54 FR 27153, June 28, 1989; Amdt. 22, 55 FR 1377, Jan. 14, 1990; 61 FR 25554, May 22, 1996; 62 FR 901, Jan. 7, 1997; 62 FR 23617, May 1, 1997; 63 FR 9104, Feb. 24, 1998; 63 FR 9727, Feb. 26, 1998; 64 FR 61775, Nov. 15, 1999; 66 FR 2203, Jan. 11, 2001; 67 FR 43476, June 27, 2002]

### § 226.3 Administration.

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

(b) Within the States, responsibility for the administration of the Program shall be in the State agency, except that if FNS has continuously administered the Program in any State since October 1, 1980, FNS shall continue to administer the Program in that State. A State in which FNS administers the Program may, upon request to FNS, assume administration of the Program.

(c) Each State agency desiring to take part in the Program 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. This agreement shall cover the operation of the Program during the period speci-

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fied therein and may be extended by consent of both parties.

(d) FNSRO shall, in each State in which it administers the Program, have available all funds and assume all responsibilities of a State agency as set forth in this part.

### Subpart B—Assistance to States

#### § 226.4 Payments to States and use of funds.

(a) *Availability of funds.* For each fiscal year based on funds provided to the Department, FNS shall make funds available to each State agency to reimburse institutions for their costs in connection with food service operations, including administrative expenses, under this part. Funds shall be made available in an amount no less than the sum of the totals obtained under paragraphs (b), (c), (d), (e) and (h) of this section. However, in any fiscal year, the aggregate amount of assistance provided to a State under this part shall not exceed the sum of the Federal funds provided by the State to participating institutions within the State for that fiscal year and any funds used by the State under paragraphs (h) and (j) of this section.

(b) *Center funds.* For meals served to participants in child care centers, adult day care centers and outside-school-hours care centers, funds shall be made available to each State agency in an amount no less than the sum of the products obtained by multiplying:

(1) The number of breakfasts served in the Program within the State to participants from families that do not satisfy the eligibility standards for free and reduced-price school meals enrolled in institutions by the national average payment rate for breakfasts for such participants under section 4 of the Child Nutrition Act of 1966;

(2) The number of breakfasts served in the Program within the State to participants from families that satisfy the eligibility standards for free school meals enrolled in institutions by the national average payment rate for free breakfasts under section 4 of the Child Nutrition Act of 1966;

(3) The number of breakfasts served to participants from families that satisfy the eligibility standard for reduced-