

compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in 7 CFR part 3015 do not relieve the State agency or school food authority of any contractual responsibilities under its contracts. The State agency or school food authority is the responsible authority, without recourse to FCS, 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) *Procurement procedure.* The State agency or school food authority may use its own procurement procedures which reflect applicable State and local laws and regulations, *provided that* procurements made with Program funds adhere to the standards set forth in 7 CFR part 3015.

#### § 210.22 Audits.

(a) *General.* State agencies and school food authorities shall comply with the requirements of 7 CFR part 3015 concerning the audit requirements for recipients and subrecipients of the Department's financial assistance.

(b) *Audit procedure.* These requirements call for organization-wide financial and compliance audits to ascertain whether financial operations are conducted properly; financial statements are presented fairly; recipients and subrecipients comply with the laws and regulations that affect the expenditures of Federal funds; recipients and subrecipients have established procedures to meet the objectives of federally assisted programs; and recipients and subrecipients are providing accurate and reliable information concerning grant funds. States and school food authorities shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in 7 CFR part 3015.

#### § 210.23 Other responsibilities.

(a) *Free and reduced price lunches and meal supplements.* State agencies and school food authorities shall ensure that lunches and meal supplements are made available free or at a reduced price to all children who are determined by the school food authority to be eligible for such benefits. The determination of a child's eligibility for free or reduced price lunches and meal supplements is to be made in accordance with 7 CFR part 245.

(b) *Civil rights.* In the operation of the Program, no child shall be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex, or handicap. State agencies and school food authorities shall comply with the requirements of: Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a, and 15b); and FCS Instruction 113-6.

(c) *Retention of records.* State agencies and school food authorities may retain necessary records in their original form or on microfilm. State agency records shall be retained for a period of 3 years after the date of submission of the final Financial Status Report for the fiscal year. School food authority records shall be retained for a period of 3 years after submission of the final Claim for Reimbursement for the fiscal year. In either case, if audit findings have not been resolved, the records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

[53 FR 29147, Aug. 2, 1988, as amended at 58 FR 42489, Aug. 10, 1993]

### Subpart F—Additional Provisions

#### § 210.24 Withholding payments.

In accordance with § 3015.103 of this title, the State agency shall withhold Program payments, in whole or in part, to any school food authority which has failed to comply with the provisions of this part. Program payments shall be withheld until the school food authority takes corrective action satisfactory

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to the State agency, or gives evidence that such corrective action will be taken, or until the State agency terminates the grant in accordance with §210.25 of this part. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any lunches served in accordance with the provisions of this part during the period the payments were withheld.

[56 FR 32948, July 17, 1991]

### **§210.25 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 FCS guidelines and instructions, FCS 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 FCS. FCS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart N concerning grant suspension, termination and closeout procedures. Furthermore, the State agency shall apply these provisions to suspension or termination of the Program in school food authorities.

[53 FR 29147, Aug. 2, 1988. Redesignated at 56 FR 32948, July 17, 1991]

### **§210.26 Penalties.**

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 if such funds, assets, or property are of a value of \$100 or more, be fined no more than \$10,000 or imprisoned not more than 5 years or both; or 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 1 year or both. Whoever receives, conceals, or retains for personal 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.

[53 FR 29147, Aug. 2, 1988. Redesignated at 56 FR 32948, July 17, 1991]

### **§210.27 Educational prohibitions.**

In carrying out the provisions of the Act, neither the Department nor the State agency shall impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, or materials of instruction in any school as a condition for participation in the Program.

[53 FR 29147, Aug. 2, 1988. Redesignated at 56 FR 32948, July 17, 1991]

### **§210.28 State Food Distribution Advisory Council.**

(a) *Council composition.* Each State educational agency, in cooperation with the State distributing agency, shall establish a State Food Distribution (SFD) Advisory Council which is composed of at least five representatives, excluding ex officio representatives, of schools which participate in the Program in the State. The State should make every effort to appoint individuals who represent large urban public schools; small rural public schools; residential child care institutions; private schools; parent teacher organizations; students from junior or senior high schools; nutritionists; school administrators; and teachers. These representatives shall be appointed for not more than 3 years.

(b) *Council leadership.* The Chairman and Vice Chairman of the SFD Advisory Council shall be elected by members of the Council. The Chief State School Officer, or designee, shall be an ex officio member of the SFD Advisory Council acting in an advisory capacity and as a non-voting member. The Chief Officer of the State distributing agency which distributes USDA donated foods to schools within the State, or designee will be an ex officio member of the SFD Advisory Council, also acting in an advisory capacity and as a non-voting member. If the State educational agency and the State distributing agency are the same entity within the State, the ex officio member of the SFD Advisory Council shall be the