

(2) *October data.* For the month of October, the State agency shall also obtain, either through the Claim for Reimbursement or other means, the total number of children approved for free lunches and meal supplements, the total number of children approved for reduced price lunches and meal supplements, and the total number of children enrolled in the school food authority as of the last day of operation in October. The school food authority shall submit this data to the State agency no later than December 31 of each year. State agencies may establish shorter deadlines at their discretion. In addition, the State agency may require school food authorities to provide this data for a more current month if for use in the State agency claims review process under paragraph (c)(2) of this section.

(d) *Advance funds.* The State agency may advance funds available for the Program to a school food authority in an amount equal to the amount of reimbursement estimated to be needed for one month's operation. Following the receipt of claims, the State agency shall make adjustments, as necessary, to ensure that the total amount of payments received by the school food authority for the fiscal year does not exceed an amount equal to the number of lunches and meal supplements by reimbursement type served to children times the respective payment rates assigned by the State in accordance with §210.7(b). The State agency shall recover advances of funds to any school food authority failing to comply with the 60-day claim submission requirements in paragraph (b) of this section.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12581, Mar. 28, 1989; 56 FR 32940, July 17, 1991; 58 FR 42487, Aug. 10, 1993; 60 FR 31207, June 13, 1995]

### Subpart C—Requirements for School Food Authority Participation

#### §210.9 Agreement with State agency.

(a) *Application.* An official of a school food authority shall make written application to the State agency for any school in which it desires to operate the Program. Applications shall provide the State agency with sufficient

information to determine eligibility. The school food authority shall also submit for approval a Free and Reduced Price Policy Statement in accordance with part 245 of this chapter.

(b) *Annual agreement.* The school food authority shall annually enter into a written agreement with the State agency. The State agency may allow school food authorities to extend by amendment a previous year's agreement in lieu of taking a new agreement annually *provided* that each year a current written agreement is on file at the State agency. The agreement shall contain a statement to the effect that the "School Food Authority and participating schools under its jurisdiction, shall comply with all provisions of 7 CFR parts 210 and 245." This agreement shall provide that each school food authority shall, with respect to participating schools under its jurisdiction:

(1) Maintain a nonprofit school food service and observe the limitations on the use of nonprofit school food service revenues set forth in §210.14(a) and the limitations on any competitive school food service as set forth in §210.11(b);

(2) Limit its net cash resources to an amount that does not exceed 3 months average expenditures for its nonprofit school food service or such other amount as may be approved in accordance with §210.19(a);

(3) Maintain a financial management system as prescribed under §210.14(c);

(4) Comply with the requirements of the Department's regulations regarding financial management (7 CFR part 3015);

(5) Serve lunches, during the lunch period, which meet the minimum requirements prescribed in §210.10 or 210.10a, whichever is applicable;

(6) Price the lunch as a unit;

(7) Serve lunches free or at a reduced price to all children who are determined by the school food authority to be eligible for such meals under 7 CFR part 245;

(8) Claim reimbursement at the assigned rates only for reimbursable free, reduced price and paid lunches served to eligible children in accordance with 7 CFR part 210. Agree that the school food authority official signing the claim shall be responsible for reviewing and analyzing meal counts to ensure

accuracy as specified in § 210.8 governing claims for reimbursement. Acknowledge that failure to submit accurate claims will result in the recovery of an overclaim and may result in the withholding of payments, suspension or termination of the program as specified in § 210.25. Acknowledge that if failure to submit accurate claims reflects embezzlement, willful misapplication of funds, theft, or fraudulent activity, the penalties specified in § 210.26 shall apply;

(9) Count the number of free, reduced price and paid reimbursable meals served to eligible children at the point of service, or through another counting system if approved by the State agency;

(10) Submit Claims for Reimbursement in accordance with § 210.8;

(11) Comply with the requirements of the Department's regulations regarding nondiscrimination (7 CFR parts 15, 15a, 15b);

(12) Make no discrimination against any child because of his or her eligibility for free or reduced price meals in accordance with the approved Free and Reduced Price Policy Statement;

(13) Enter into an agreement to receive donated foods as required by 7 CFR part 250;

(14) 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;

(15) 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;

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

(17) Upon request, make all accounts and records pertaining to its school food service available to the State agency and to FCS, for audit or review, at a reasonable time and place. Such records shall be retained for a period of 3 years after the date of the final Claim for Reimbursement for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the 3 year period as long as required for resolution of the issues raised by the audit;

(18) Maintain files of currently approved and denied free and reduced price applications, respectively, and the names of children approved for free lunches based on documentation certifying that the child is included in a household approved to receive benefits under the Food Stamp or the Aid to Families with Dependent Children Programs. If the applications and/or documentation are maintained at the school food authority level, they shall be readily retrievable by school;

(19) Retain the individual applications for free and reduced price lunches and meal supplements submitted by families for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified under paragraph (b)(17) of this section.

(20) No later than March 1, 1997, and no later than December 31 of each year thereafter, provide the State agency with a list of all elementary schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the preceding October.

(c) *Afterschool care requirements.* Those school food authorities with eligible schools (as defined in § 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable) that elect to serve meal supplements during afterschool care programs, shall agree to:

(1) Serve meal supplements which meet the minimum requirements prescribed in § 210.10 or § 210.10a, whichever is applicable;

(2) Price the meal supplement as a unit;

(3) Serve meal supplements free or at a reduced price to all children who are determined by the school food authority to be eligible for free or reduced price school meals under 7 CFR part 245;

(4) If charging for meals, the charge for a reduced price meal supplement shall not exceed 15 cents;

(5) Claim reimbursement at the assigned rates only for meal supplements served in accordance with the agreement;

(6) Claim reimbursement for no more than one meal supplement per child per day;

(7) Review each afterschool care program two times a year; the first review shall be made during the first four weeks that the school is in operation each school year, except that an afterschool care program operating year round shall be reviewed during the first four weeks of its initial year of operation, once more during its first year of operation, and twice each school year thereafter; and

(8) Comply with all requirements of this part, except that, claims for reimbursement need not be based on "point of service" meal supplement counts (as required by § 210.9(b)(9)).

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**§ 210.10 Nutrition standards for lunches and menu planning methods.**

(a) *General requirements for school lunches.* (1) In order to qualify for reimbursement, all lunches served to children age 2 and older, as offered by participating schools, shall, at a minimum, meet the nutrition standards provided in paragraph (b) of this section and the appropriate level of calories and nutrients provided for in either paragraph (c) or paragraph (i)(1) of this section for nutrient standard menu planning and assisted nutrient standard menu planning or in paragraph (d) of this section for food-based menu planning, whichever is applicable. Compliance with the nutrition standards and the nutrient and calorie levels shall be determined by averaging lunches offered over a school week. Except as otherwise provided herein, school food authorities shall ensure that sufficient quantities of foods are planned and produced to meet, at a minimum, the nutrition standards in paragraph (b) of this section, the appropriate nutrient and calorie levels in paragraphs (c), (d), or (i)(1) of this section, whichever is applicable, and to either contain all the required food items in at least the amounts indicated in paragraph (k) of this section or to supply sufficient quantities of menu items and foods as provided in paragraphs (i) or (j) of this section.

(2) School food authorities shall ensure that each lunch is priced as a unit and that lunches are planned and produced on the basis of participation trends, with the objective of providing one reimbursable lunch per child per day. Any excess lunches that are produced may be offered, but shall not be claimed for general or special cash assistance provided under § 210.4. The component requirements for meal supplements served under the Child and Adult Care Food Program authorized under part 225 of this chapter shall also apply to meal supplements served by eligible school food authorities in afterschool care programs under the NSLP.

(3) Production and menu records shall be maintained to demonstrate that the required number of food components and food items or menu items are offered on a given day. Production records shall include sufficient information to evaluate the menu's contribution to the requirements on nutrition standards in paragraph (b) of this section and the appropriate levels of nutrients and calories in paragraphs (c), (d) or (i)(1) of this section, whichever is applicable. If applicable, schools or school food authorities shall maintain nutritional analysis records to demonstrate that lunches meet, when averaged over each school week, the nutrition standards provided in paragraph (b) of this section and the nutrient and calorie levels for the appropriate age or grade group as provided for in paragraphs (c) or (i)(1) of this section, whichever is applicable.

(b) *Nutrition standards for reimbursable lunches.* School food authorities shall ensure that participating schools provide nutritious and well-balanced meals to children. In addition, for children ages 2 and above meals shall be provided based on the nutrition standards provided in this section.

(1) Provision of one-third of the Recommended Dietary Allowances (RDA) of protein, calcium, iron, vitamin A and vitamin C to the applicable age or grade groups in accordance with the appropriate levels provided in paragraph (c), (d) or (i)(1) of this section, whichever is applicable;

(2) Provision of the lunchtime energy allowances for children based on the