

## §215.12

## 7 CFR Ch. II (1-1-12 Edition)

Department (OI) shall make investigations at the request of the State Agency or if CND or FNSRO determines investigations by OI are appropriate.

(f) *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.

(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); 44 U.S.C. 3506; sec. 812, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1759a))

[32 FR 12587, Aug. 31, 1967, as amended by Amdt. 13, 39 FR 28417, Aug. 7, 1974; Amdt. 14, 41 FR 31175, July 27, 1976; 47 FR 745, Jan. 7, 1982; Amdt. 25, 47 FR 18564, Apr. 30, 1982; Amdt. 30, 49 FR 18987, May 4, 1984; 56 FR 32949, July 17, 1991; 57 FR 38586, Aug. 26, 1992; 76 FR 37982, June 29, 2011]

### §215.12 Claims against schools or child-care institutions.

(a) State agencies, or FNSROs where applicable, shall disallow any portion of a claim and recover any payment made to a School Food Authority or child-care institution 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 any matter in connection with this section to FNSRO and CND for determination of the action to be taken.

(d) Each State agency shall maintain all records pertaining to action taken under this section. Such records shall be retained for a period of three years after the date of the submission of the final Financial Status Report, 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.

(e) If CND does not concur with the State Agency action in paying a claim or a reclaim, or in failing to collect an overpayment FNSRO 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 and child-care institutions may be utilized, first, to make reimbursement payments for milk served 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 §215.5(c).

(g) With respect to schools or child-care institutions in which FNSRO administers the Program, 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 or child-care institutions of the reasons for such disallowance or demand and the School Food Authority or child-care institutions shall have full opportunity to submit evidence or to file reclaim for any amount disallowed or demanded in the same manner afforded in this section to schools or child-care institutions administered by State Agencies.

(h) The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claims 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.

(47 FR 745, Jan. 7, 1982 (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 12587, Aug. 31, 1967, as amended by Amdt. 5, 37 FR 14686, July 22, 1972; Amdt. 13, 39 FR 28418, Aug. 7, 1974; Amdt. 14, 41 FR 31175, July 27, 1976; 47 FR 745, Jan. 7, 1982; Amdt. 24, 47 FR 14133, Apr. 2, 1982]