

Food and Nutrition Service, USDA

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(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; 44 U.S.C. 3506))

[Amdt. 14, 41 FR 31174, July 27, 1976, as amended by Amdt. 18, 44 FR 37898, June 29, 1979; 47 FR 746, Jan. 7, 1982; 64 FR 50741, Sept. 20, 1999]

§215.7 Requirements for participation.

(a) Any school or nonprofit child care institution shall receive the Special Milk Program upon request provided it does not participate in a meal service program authorized under the Child Nutrition Act of 1966 or the National School Lunch Act; except that schools with such meal service may receive the Special Milk Program upon request only for the children attending split-session kindergarten programs who do not have access to the meal service. Each School Food Authority or child-care institution shall make written application to the State agency, or FNSRO where applicable, for any school or child-care institution in which it desires to operate the Program, if such school or child-care institution did not participate in the Program in the prior fiscal year.

(b) Any School Food Authority or child care institution participating in the Program may elect to serve free milk to children eligible for free meals. Upon application for the Program, each

School Food Authority or child care institution:

(1) Shall be required by the State agency, or FNSRO where applicable, to state whether or not it wishes to provide free milk in the schools or institutions participating under its jurisdiction and

(2) If it so wishes to provide free milk, shall also submit for approval a free milk policy statement which, if for a school, shall be in accordance with part 245 of this chapter or, if for a child care institution, shall be in accordance with §215.13a of this part.

(c) The application shall include information in sufficient detail to enable the State agency, or FNSRO where applicable, to determine whether the School Food Authority or child-care institution is eligible to participate in the Program and extent of the need for Program payments.

(d) Each school food authority or child care institution approved to participate in the program shall enter into a written agreement with the State agency or 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 to suspend or terminate the agreement in accordance with §215.15. 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 agreement shall provide that the School Food Authority or child-care institution shall, with respect to participating schools and child-care institutions under its jurisdiction:

(1) Operate a nonprofit milk service. However, school food authorities may use facilities, equipment, and personnel supported with funds provided to a school food authority under this part 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.).

(2) If electing to provide free milk (i) serve milk free to all eligible children, at times that milk is made available to nonneedy children under the Program; and (ii) make no discrimination

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against any needy child because of his inability to pay for the milk.

(3) Comply with the requirements of the Department's regulations respecting nondiscrimination (7 CFR part 15);

(4) Claim reimbursement only for milk as defined in this part and in accordance with the provisions of §215.8 and §215.10;

(5) Submit Claims for Reimbursement in accordance with §215.10 of this part and procedures established by the State agency or FNSRO where applicable;

(6) Maintain a financial management system as prescribed by the State agency, or FNSRO where applicable;

(7) Upon request, make all records pertaining to its milk program available to the State agency and to FNS or OA for audit and administrative review, at any 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;

(8) Retain the individual applications for free milk submitted by families 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.

(e) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional requirements for participation in the Program which are not inconsistent with the provision of this part.

(f) *Program evaluations.* Local educational agencies, school food authorities, schools, child care institutions and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department, related to programs authorized under the Rich-

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ard 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); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772); secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758); 44 U.S.C. 3506)

[Amdt. 13, 39 FR 28416, Aug. 7, 1974]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §215.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§215.8 Reimbursement payments.

(a) [Reserved]

(b)(1) The rate of reimbursement per half-pint of milk purchased and (i) served in nonpricing programs to all children; (ii) served to all children in pricing programs by institutions and School Food Authorities not electing to provide free milk; and (iii) served to children other than needy children in pricing programs by institutions and School Food Authorities electing to provide free milk shall be the rate announced by the Secretary for the applicable school year. However, in no event shall the reimbursement for each half-pint (236 ml.) of milk served to children exceed the cost of the milk to the school or child care institution.

(2) The rate of reimbursement for milk purchased and served free to needy children in pricing programs by institutions and School Food Authorities electing to provide free milk shall be the average cost of milk, i.e., the total cost of all milk purchased during the claim period, divided by the total number of purchased half-pints.

(c) Schools and child-care institutions having pricing programs shall use the reimbursement payments received to reduce the price of milk to children.

(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772); Omnibus Reconciliation Act of 1980, sec. 209, Pub. L. 96-499, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; secs. 805 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773))

[Amdt. 13, 39 FR 28416, Aug. 7, 1974, as amended by Amdt. 16, 43 FR 1060, Jan. 6, 1978; 44 FR 10700, Feb. 23, 1979; Amdt. 17, 44 FR 33047, June 8, 1979; 46 FR 51365, Oct. 20, 1981; Amdt. 23, 47 FR 14134, Apr. 2, 1982]