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School Breakfast Program. Advance payments to School Food Authorities may be made at such times and in such amounts as are necessary to meet current obligations.

(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)

[40 FR 30923, July 24, 1975, as amended by Amdt. 25, 41 FR 34759, Aug. 17, 1976; Amdt. 28, 44 FR 37899, June 29, 1979; 64 FR 50742, Sept. 20, 1999]

§ 220.7 Requirements for participation.

(a) The School Food Authority shall make written application to the State agency, or FNSRO where applicable, for any school in which it desires to operate the School Breakfast Program, if such school did not participate in the Program in the prior fiscal year. The School Food Authority shall also submit for approval, either with the application or at the request of the State agency, or FNSRO where applicable, a free and reduced price policy statement in accordance with part 245 of this chapter. A School Food Authority which simultaneously makes application for the National School Lunch Program and the School Breakfast Program shall submit one free and reduced price policy statement which shall provide that the terms, conditions, and

eligibility criteria set forth in such policy statement shall apply to the service of free and reduced price lunches and to the service of free and reduced price breakfasts. If, at the time application is made for the School Breakfast Program, a School Food Authority has an approved free and reduced price policy statement on file with the State agency, or FNSRO where applicable, for the National School Lunch Program, it need only confirm in writing that such approved policy statement will also apply to the operation of its School Breakfast Program. Applications for the School Breakfast Program shall not be approved in the absence of an approved free and reduced price policy statement.

(1) A school which also either participates in the National School Lunch Program or only receives donations of commodities for its nonprofit lunch program under the provisions of part 250 of this chapter (commodity only school) shall apply the same set of eligibility criteria so that children who are eligible for free lunches shall also be eligible for free breakfasts and children who are eligible for reduced price lunches shall also be eligible for reduced price breakfasts.

(2) Schools shall obtain a minimum of two food safety inspections per school year conducted by a State or local governmental agency responsible for food safety inspections. Schools participating in more than one child nutrition program shall only be required to obtain a minimum of two food safety inspections per school year if the food preparation and service for all meal programs take place at the same facility. Schools shall post in a publicly visible location a report of the most recent inspection conducted, and provide a copy of the inspection report to a member of the public upon request.

(3) A school food authority must implement a food safety program meeting the requirements of §§210.13(c) and 210.15(b)(5) of this chapter at each of the food preparation and service facilities under its jurisdiction serving breakfasts.

(b) Applications shall solicit information in sufficient detail to enable the

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State agency to determine whether the School Food Authority is eligible to participate in the Program and extent of the need for Program payments.

(c) Within the funds available to them, State agencies, or FNSRO's where applicable, shall approve for participation in the School Breakfast Program any school making application and agreeing to carry out the program in accordance with this part. State agencies, or FNSRO's where applicable, have a positive obligation, however, to extend the benefits of the School Breakfast Program to children attending schools in areas where poor economic conditions exist.

(d)(1) Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and paid reimbursable breakfasts to all eligible children. Any school food authority that employs a food service management company in the operation of its nonprofit school food service shall:

(i) Adhere to the procurement standards specified in §220.16 when contracting with the food service management company;

(ii) Ensure that the food service operation is in conformance with the school food authority's agreement under the Program;

(iii) Monitor the food service operation through periodic on-site visits;

(iv) Retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals;

(v) Retain signature authority on the State agency-school food authority agreement, free and reduced price policy statement and claims;

(vi) Ensure that all federally donated foods received by the school food authority and made available to the food service management company accrue only to the benefit of the school food authority's nonprofit school food service and are fully utilized therein;

(vii) Maintain applicable health certification and assure that all State and local regulations are being met by a food service management company preparing or serving meals at a school food authority facility;

(viii) Obtain written approval of invitations for bids and requests for proposals before their issuance when required by the State agency. The school food authority must incorporate all State agency required changes to its solicitation documents before issuing those documents; and

(ix) Ensure that the State agency has reviewed and approved the contract terms and the school food authority has incorporated all State agency required changes into the contract or amendment before any contract or amendment to an existing food service management company contract is executed. Any changes made by the school food authority or a food service management company to a State agency pre-approved prototype contract or State agency approved contract term must be approved in writing by the State agency before the contract is executed. When requested, the school food authority must submit all procurement documents, including responses submitted by potential contractors, to the State agency, by the due date established by the State agency.

(2) In addition to adhering to the procurement standards under this part, school food authorities contracting with food service management companies shall ensure that:

(i) The invitation to bid or request for proposal contains a 21-day cycle menu developed in accordance with the provisions of §220.8, to be used as a standard for the purpose of basing bids or estimating average cost per meal. A school food authority with no capability to prepare a cycle menu may, with State agency approval, require that each food service management company include a 21-day cycle menu, developed in accordance with the provisions of §220.8, with its bid or proposal. The food service management company must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with

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the approval of the school food authority; and

(i) Any invitation to bid or request for proposal indicate that nonperformance subjects the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The school food authority shall indicate these sanctions in accordance with the procurement provisions stated in § 220.16.

(3) Contracts that permit all income and expenses to accrue to the food service management company and “cost-plus-a-percentage-of-cost” and “cost-plus-a-percentage-of-income” contracts are prohibited. Contracts that provide for fixed fees such as those that provide for management fees established on a per meal basis are allowed. Contractual agreements with food service management companies shall include provisions which ensure that the requirements of this section are met. Such agreements shall also include the following requirements:

(i) The food service management company shall maintain such records as the school food authority will need to support its Claim for Reimbursement under this part, and shall, at a minimum, report claim information to the school food authority promptly at the end of each month. Such records shall be made available to the school food authority, upon request, and shall be available for a period of 3 years from the date of the submission of the final Financial Status Report, for inspection and audit by representatives of the State agency, of the Department, and of the Government Accountability Office at any reasonable time and place. 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);

(ii) The food service management company shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract; and

(iii) No payment is to be made for meals that are spoiled or unwholesome

at time of delivery, do not meet detailed specifications as developed by the school food authority for each food component specified in § 220.8, or do not otherwise meet the requirements of the contract. Specifications shall cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.

(4) The contract between a school food authority and food service management company shall be of a duration of no longer than 1 year and options for the yearly renewal of the contract shall not exceed 4 additional years. All contracts shall include a termination clause whereby either party may cancel for cause with 60-day notification.

(e) Each school food authority approved to participate in the program shall enter into a written agreement with the State agency or the Department through the 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 or the FNSRO to suspend or terminate the agreement in accordance with § 220.18. 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 agreements shall provide that the School Food Authority shall, with respect to participating schools under its jurisdiction:

(1)(i) Maintain a nonprofit school food service;

(ii) In accordance with the financial management system established under § 220.13(i) of this part, use all revenues received by such food service only for the operation or improvement of that food service *Except that*, facilities, equipment, and personnel support with funds provided to a school food authority under this part may be used 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.);

(iii) Revenues received by the nonprofit school food service shall not be used to purchase land or buildings or to construct buildings;

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(iv) Limit its net cash resources to an amount that does not exceed three months average expenditure for its nonprofit school food service or such other amount as may be approved by the State agency; and

(v) Observe the limitations on any competitive food service as set forth in § 220.12 of this part;

(2) Serve breakfasts which meet the minimum requirements prescribed in § 220.8, during a period designated as the breakfast period by the school;

(3) Price the breakfast as a unit;

(4) Supply breakfast without cost or at reduced price to all children who are determined by the School Food Authority to be unable to pay the full price thereof in accordance with the free and reduced price policy statements approved under part 245 of this chapter;

(5) Make no discrimination against any child because of his inability to pay the full price of the breakfasts;

(6) Claim reimbursement at the assigned rates only for breakfasts served in accordance with the agreement;

(7) Submit Claims for Reimbursement in accordance with § 220.11 of this part and procedures established by the State agency, or FNSRO where applicable;

(8) 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, and comply with the food safety requirements in paragraph (a)(2) and paragraph (a)(3) of this section;

(9) Purchase, in as large quantities as may be efficiently utilized in its nonprofit school food service, foods designated as plentiful by the State Agency, or CFPDO, where applicable;

(10) 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;

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

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

(13) Upon request, make all accounts and records pertaining to its nonprofit school food service available to the

State agency, to FNS and to OA for audit or review at a 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;

(14) Retain documentation of free or reduced price eligibility as follows:

(i) Maintain files of currently approved and denied free and reduced price applications which must be readily retrievable by school for a period of three years after the end of the fiscal year to which they pertain; or

(ii) Maintain files with the names of children currently approved for free meals through direct certification with the supporting documentation, as specified in § 245.6(b)(4) of this chapter, which must be readily retrievable by school. Documentation for direct certification must include information obtained directly from the appropriate State or local agency, or other appropriate individual, as specified by FNS, that:

(A) A child in the *Family*, as defined in § 245.2 of this chapter, is receiving benefits from *SNAP*, *FDPIR* or *TANF*, as defined in § 245.2 of this chapter; if one child is receiving such benefits, all children in that family are considered to be directly certified;

(B) The child is a homeless child as defined in § 245.2 of this chapter;

(C) The child is a runaway child as defined in § 245.2 of this chapter;

(D) The child is a migrant child as defined in § 245.2 of this chapter; or

(E) The child is a Head Start child, as defined in § 245.2 of this chapter.

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

(f) Nothing contained in this part shall prevent the State Agency from imposing additional requirements for participation in the program which are not inconsistent with the provisions of this part.

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(g) *Program evaluations.* Local educational agencies, school food authorities, schools, 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.

(44 U.S.C. 3506; sec. 819, Pub. L. 97–35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757); Pub. L. 79–396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89–647, 80 Stat. 885–890 (42 U.S.C. 1773); Pub. L. 91–248, 84 Stat. 207 (42 U.S.C. 1759))

[32 FR 34, Jan. 5, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 220.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 220.8 Meal requirements for breakfasts.

(a) *General requirements.* This section contains the meal requirements applicable to school breakfasts for students in grades K to 12. With the exception of the milk component, the meal requirements must be implemented beginning July 1, 2013 or as otherwise specified. School food authorities wishing to adopt the provisions of this section prior to the required date of compliance may do so with the approval of the State agency. In general, school food authorities must ensure that participating schools provide nutritious, well-balanced, and age-appropriate breakfasts to all the children they serve to improve their diet and safeguard their health.

(1) *General nutrition requirements.* School breakfasts offered to children age 5 and older must meet, at a minimum, the meal requirements in paragraph (b) of this section. Schools must follow a food-based menu planning approach and produce enough food to offer each child the quantities specified in the meal pattern established in paragraph (c) of this section for each age/grade group served in the school. In addition, school breakfasts must meet the dietary specifications in paragraph (f) of this section. Schools offering breakfasts to children ages 1 to 4 and infants must meet the meal pattern requirements in paragraph (o) of this section.

(2) *Unit pricing.* Schools must price each meal as a unit. The price of a reimbursable lunch does not change if the student does not take a food item or requests smaller portions. Schools must identify, near or at the beginning of the serving line(s), the food items that constitute the unit-priced reimbursable school meal(s).

(3) *Production and menu records.* Schools or school food authorities, as applicable, must keep production and menu records for the meals they produce. These records must show how the meals offered contribute to the required food components and food quantities for each age/grade group every day. Labels or manufacturer specifications for food products and ingredients used to prepare school meals must indicate zero grams of *trans* fat per serving (less than 0.5 grams). Schools or school food authorities must maintain records of the latest nutritional analysis of the school menus conducted by the State agency. Production and menu records must be maintained in accordance with FNS guidance.

(b) *Meal requirements for school breakfasts.* School breakfasts for children ages 5 and older must reflect food and nutrition requirements specified by the Secretary. Compliance with these requirements, once fully implemented as specified in paragraphs (c), (d), (e), (f), (h), (i), and (j) of this section, is measured as follows:

(1) On a daily basis:

(i) Meals offered to each age/grade group must include the food components and food quantities specified in the meal pattern in paragraph (c) of this section;

(ii) Food products or ingredients used to prepare meals must contain zero grams of *trans* fat per serving or a minimal amount of naturally occurring *trans* fat as specified in paragraph (f) of this section; and

(iii) Meal selected by each student must have the number of food components required for a reimbursable meal and include at least one fruit or vegetable.

(2) Over a 5-day school week:

(i) Average calorie content of the meals offered to each age/grade group