

Food and Nutrition Service, USDA

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10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date and place of the hearing;

(4) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(6) The review official shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(7) Within 60 calendar days of the State agency's receipt of the request for review, by written notice, sent by certified mail, return receipt requested, the review official shall inform the State agency and the appellant of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The State agency's action shall remain in effect during the appeal process;

(9) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(r) *FNS review activity.* The term "State agency" and all the provisions specified in paragraphs (a)–(h) of this section refer to FNS when FNS conducts administrative reviews or follow-up reviews in accordance with § 210.29(d)(2). FNS will notify the State agency of the review findings and the need for corrective action and fiscal action. The State agency shall pursue any needed follow-up activity.

[56 FR 32942, July 17, 1991; 56 FR 55527, Oct. 28, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 210.18, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 210.19 Additional responsibilities.

(a) *General Program management.* Each State agency shall provide an adequate

number of consultative, technical and managerial personnel to administer programs and monitor performance in complying with all Program requirements.

(1) *Assurance of compliance for finances.* Each State agency shall ensure that school food authorities comply with the requirements to account for all revenues and expenditures of their nonprofit school food service. School food authorities shall meet the requirements for the allowability of nonprofit school food service expenditures in accordance with this part and, 7 CFR part 3015 and 7 CFR part 3016, or 7 CFR part 3019, as applicable. All costs resulting from contracts that do not meet the requirements of this part are unallowable nonprofit school food service account expenses. When the school food authority fails to incorporate State agency required changes to solicitation or contract documents, all costs resulting from the subsequent contract award are unallowable charges to the nonprofit school food service account. The State agency shall ensure compliance with the requirements to limit net cash resources and shall provide for approval of net cash resources in excess of three months' average expenditures. Each State agency shall monitor, through review or audit or by other means, the net cash resources of the nonprofit school food service in each school food authority participating in the Program. In the event that net cash resources exceed 3 months' average expenditures for the school food authority's nonprofit school food service or such other amount as may be approved in accordance with this paragraph, the State agency may require the school food authority to reduce the price children are charged for lunches, improve food quality or take other action designed to improve the nonprofit school food service. In the absence of any such action, the State agency shall make adjustments in the rate of reimbursement under the Program. Each State agency shall ensure that school food authorities comply with the requirements for pricing paid lunches and nonprogram foods as required in § 210.14(e) and § 210.14(f).

(2) *Improved management practices.* The State agency shall work with the

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school food authority toward improving the school food authority's management practices where the State agency has found poor food service management practices leading to decreasing or low child participation and/or poor child acceptance of the Program or of foods served. If a substantial number of children who routinely and over a period of time do not favorably accept a particular item that is offered; return foods; or choose less than all food items/components or foods and menu items, as authorized under §210.10, poor acceptance of certain menus may be indicated.

(3) *Program compliance.* Each State agency shall require that school food authorities comply with the applicable provisions of this part. The State agency shall ensure compliance through audits, administrative reviews, technical assistance, training guidance materials or by other means.

(4) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agencies shall maintain on file, evidence of such investigations and actions. FNS and OIG may make reviews or investigations at the request of the State agency or where FNS or OIG determines reviews or investigations are appropriate.

(5) *Food service management companies.* Each State agency shall annually review each contract (including all supporting documentation) between any school food authority and food service management company to ensure compliance with all the provisions and standards set forth in this part before execution of the contract by either party. When the State agency develops a prototype contract for use by the school food authority that meets the provisions and standards set forth in this part, this annual review may be limited to changes made to that contract. Each State agency shall review each contract amendment between a school food authority and food service management company to ensure compliance with all the provisions and standards set forth in this part before execution of the amended contract by

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either party. The State agency may establish due dates for submission of the contract or contract amendment documents. Each State agency shall perform an on-site review of each school food authority contracting with a food service management company, at least once during each 5-year period. The State agency is encouraged to conduct such a review when performing reviews in accordance with §210.18. Such reviews shall include an assessment of the school food authority's compliance with §210.16 of this part. The State agency may require that all food service management companies that wish to contract for food service with any school food authority in the State register with the State agency. State agencies shall provide assistance upon request of a school food authority to assure compliance with Program requirements.

(b) *Donated food distribution information.* Information on schools eligible to receive donated foods available under section 6 of the National School Lunch Act (42 U.S.C. 1755) shall be prepared each year by the State agency with accompanying information on the average daily number of lunches to be served in such schools. This information shall be prepared as early as practicable each school year and forwarded no later than September 1 to the Distributing agency. The State agency shall be responsible for promptly revising the information to reflect additions or deletions of eligible schools, and for providing such adjustments in participation as are determined necessary by the State agency. Schools shall be consulted by the Distributing agency with respect to the needs of such schools relating to the manner of selection and distribution of commodity assistance.

(c) *Fiscal action.* State agencies are responsible for ensuring Program integrity at the school food authority level. State agencies must take fiscal action against school food authorities for Claims for Reimbursement that are not properly payable, including, if warranted, the disallowance of funds for failure to take corrective action to comply with the meal requirements in parts 210 and 220 of this chapter. In taking fiscal action, State agencies must use their own procedures within

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the constraints of this part and must maintain all records pertaining to action taken under this section. The State agency may refer to FNS for assistance in making a claim determination under this part.

(1) *Definition.* Fiscal action includes, but is not limited to, the recovery of overpayment through direct assessment or offset of future claims, disallowance of overclaims as reflected in unpaid Claims for Reimbursement, submission of a revised Claim for Reimbursement, and correction of records to ensure that unfiled Claims for Reimbursement are corrected when filed. Fiscal action also includes disallowance of funds for failure to take corrective action to meet the meal requirements in parts 210 and 220 of this chapter, including the disallowance of performance-based cash assistance described in § 210.4(b)(1).

(2) *General principles.* When taking fiscal action, State agencies shall consider the following:

(i) The State agency shall identify the school food authority's correct entitlement and take fiscal action when any school food authority claims or receives more Federal funds than earned under § 210.7 of this part. In order to take fiscal action, the State agency shall identify accurate counts of reimbursable lunches through available data, if possible. In the absence of reliable data, the State agency shall reconstruct the lunch accounts in accordance with procedures established by FNS. Such procedures will be based on the best available information including, participation factors for the review period, data from similar schools in the school food authority, etc.

(ii) Unless otherwise specified under § 210.18(m) of this part, fiscal action shall be extended back to the beginning of the school year or that point in time during the current school year when the infraction first occurred, as applicable. Based on the severity and longevity of the problem, the State agency may extend fiscal action back to previous school years, as applicable. The State agency shall ensure that any Claim for Reimbursement, filed subsequent to the reviews conducted under § 210.18 and prior to the implementation

of corrective action, is limited to lunches eligible for reimbursement under this part.

(iii) In taking fiscal action, State agencies shall assume that children determined by the reviewer to be incorrectly approved for free and reduced price lunches participated at the same rate as correctly approved children in the corresponding lunch category.

(3) *Failure to collect.* If a State agency fails to disallow a claim or recover an overpayment from a school food authority, as described in this section, FNS will notify the State agency that a claim may be assessed against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning overpayment. If after considering all available information, FNS determines that a claim is warranted, FNS will assess a claim in the amount of such overpayment against the State agency. If the State agency fails to pay any such demand for funds promptly, FNS will reduce the State agency's Letter of Credit by the sum due in accordance with FNS' existing offset procedures for Letter of Credit. In such event, the State agency shall provide the funds necessary to maintain Program operations at the level of earnings from a source other than the Program.

(4) *Interest charge.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit, interest will be charged against the State agency from the date the demand letter was sent, at the rate established by the Secretary of Treasury.

(5) *Use of recovered payment.* The amounts recovered by the State agency from school food authorities may be utilized during the fiscal year for which the funds were initially available, first, to make payments to school food authorities for the purposes of the Program; 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 this part.

(6) *Exceptions.* The State agency need not disallow payment or collect an overpayment when any review or audit

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reveals that a school food authority is approving applications which indicate that the households' incomes are within the Income Eligibility Guidelines issued by the Department or the applications contain Supplemental Nutrition Assistance Program or TANF case numbers or FDPIR case numbers or other FDPIR identifiers but the applications are missing the information specified in paragraph (1)(ii) of the definition of *Documentation* in §245.2 of this chapter.

(7) *Claims adjustment.* FNS will have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. FNS will also have the authority to waive such claims if FNS 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.

(d) *Management evaluations.* Each State agency shall provide FNS with full opportunity to conduct management evaluations of all State agency Program operations and shall provide OIG with full opportunity to conduct audits of all State agency Program operations. Each State agency shall make available its records, including records of the receipt and disbursement of funds under the Program and records of any claim compromised in accordance with this paragraph, upon a reasonable request by FNS, OIG, or the Comptroller General of the United States. FNS and OIG retain the right to visit schools and OIG also has the right to make audits of the records and operations of any school. In conducting management evaluations, reviews, or audits in a fiscal year, the State agency, FNS, or OIG may disregard an overpayment if the overpayment does not exceed \$600. A State agency may establish, through State law, regulation or procedure, an alternate disregard threshold that does not exceed \$600. This disregard may be made once per each management evaluation, review, or audit per Program within a fiscal year. However, no overpayment is to be disregarded where there is substantial

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evidence of violations of criminal law or civil fraud statutes.

(e) *Additional 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 provisions of this part.

(f) *Cooperation with the Child and Adult Care Food Program.* On an annual basis, the State agency shall provide the State agency which administers the Child and Adult Care Food Program with a list of all schools in the State participating in the National School Lunch Program 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 previous October, or other month specified by the State agency. The first list shall be provided by March 15, 1997; subsequent lists shall be provided by February 1 of each year or, if data is based on a month other than October, within 90 calendar days following the end of the month designated by the State agency. The State agency may provide updated free and reduced price enrollment data on individual schools to the State agency which administers the Child and Adult Care Food Program only when unusual circumstances render the initial data obsolete. In addition, the State agency shall provide the current list, upon request, to sponsoring organizations of day care homes participating in the Child and Adult Care Food Program.

(g) *Program outreach.* State agencies must ensure that school food authorities conduct the outreach activities required under §210.12(d). If the State agency administering the Summer Food Service Program is not the same State agency that administers the National School Lunch Program, then the two State agencies must work together to implement outreach measures.

[53 FR 29147, Aug. 2, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §210.19, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§210.20 Reporting and recordkeeping.

(a) *Reporting summary.* Participating State agencies shall submit forms and