

## §215.3

## 7 CFR Ch. II (1–1–10 Edition)

the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term *residential child care institutions* includes, but is not limited to: Homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more.

*School Breakfast Program* means the program authorized by section 4 of the Child Nutrition Act of 1966, as amended.

*School Food Authority* means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a milk program therein. The term “School Food Authority” also includes a nonprofit agency to which such governing body has delegated authority for the operation of a milk program in a school.

*School year* means the period of 12 calendar months beginning July 1, 1977, and each July 1 of any calendar year thereafter and ending June 30 of the following calendar year.

*Split-session* means an educational program operating for approximately one-half of the normal school day.

*State* means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and, as applicable, American Samoa and the Commonwealth of the Northern Marianas.

*State agency* means the State educational agency or any other State agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program.

*State Children’s Health Insurance Program (SCHIP)* means the State medical

assistance program under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

*Summer Food Service Program for Children* means the program authorized by section 13 of the National School Lunch Act, as amended.

(Sec. 11, Pub. L. 95–166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766; sec. 10(a), Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760; sec. 10(d)), Pub. L. 95–627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95–627, 92 Stat. 3625–3626; sec. 205, Pub. L. 96–499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1772, 1784, 1760))

[32 FR 12587, Aug. 31, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §215.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### §215.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, CND shall be responsible for Program administration.

(b) Within the States, to the extent practicable and permissible under State law, responsibility for the administration of the Program in schools and child care institutions shall be in the educational agency of the State: *Provided, however*, That another State agency, upon request by the Governor or other appropriate State executive or legislative authority, may be approved to administer the Program in schools as described in paragraph (3) of the definition of *School* in §215.2 or in child care institutions.

(c) FNSRO shall administer the Program in any *School* or any *Child care institution* as defined in §215.2 wherein the State agency is not permitted by law to disburse Federal funds paid to it under the Program; *Provided, however*, That FNSRO shall also administer the Program in all other schools and child-care institutions which have been under continuous FNS administration since October 1, 1980 unless the administration of such schools and institutions is assumed by a State agency. References in this part to “FNSRO where applicable” are to FNSRO as the agency administering the Program to

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schools or child-care institutions with-  
in certain States.

(d) Each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part, 7 CFR parts 235, 245, 15, 15a, 15b and, as applicable, 7 CFR part 3015, 7 CFR part 3016 and 7 CFR part 3019, and with FNS Instructions. Such agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.

(Secs. 804, 816 and 817, Pub. L. 97-35; 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785))

[Amdt. 14, 41 FR 31174, July 27, 1976, as amended by Amdt. 24, 47 FR 14133 Apr. 2, 1982; Amdt. 36, 54 FR 2989, Jan. 23, 1989; 71 FR 39516, July 13, 2006; 72 FR 63791, Nov. 13, 2007]

### §215.4 Payments of funds to States and FNSROs.

(a) For each fiscal year, the Secretary shall make payments to each State agency at such times as he may determine from the funds appropriated for Program reimbursement. Subject to §215.11(c)(2), the total of these payments for each State for any fiscal year shall be limited to the amount of reimbursement payable to School Food Authorities and child care institutions under §215.8 of this part for the total number of half-pints of milk served under the Program to eligible children from October 1 to September 30.

(b) Each State agency shall be responsible for controlling Program reimbursement payments so as to keep within the funds made available to it, and for the timely reporting to FNS of the number of half pints of milk actually served. The Secretary shall increase or decrease the available level of funding by adjusting the State agency's Letter of Credit when appropriate.

(Pub. L. 97-370, 96 Stat. 1806)

[Amdt. 14, 41 FR 31174, July 27, 1976, as amended by Amdt. 30, 49 FR 18986, May 4, 1984]

### §215.5 Method of payment to States.

(a) Funds to be paid to any State shall be made available by means of

Letters of Credit issued by FNS in favor of the State agency. The State agency shall:

(1) Obtain funds needed to reimburse School Food Authorities and child-care institutions through presentation by designated State officials of a Payment Voucher on Letter of Credit (Treasury Form GFO 7578) in accordance with procedures prescribed by FNS and approved by the U.S. Treasury Department; (2) submit requests for funds only at such times and in such amounts as will permit prompt payment of claims; (3) use the funds received from such requests without delay for the purpose for which drawn. Notwithstanding the foregoing provisions, if funds are made available by Congress for the operation of the Program under a continuing resolution, Letters of Credit shall reflect only the amount available for the effective period of the resolution.

(b) [Reserved]

(c) The State agency shall release to FNS any Federal funds made available to it under the Program which are unobligated at the end of each fiscal year. Release of funds by the State agency shall be made as soon as practicable but in no event later than 30 days following demand by FNSRO, and shall be reflected by a related adjustment in the State agency's Letter of Credit.

[Amdt. 13, 39 FR 28416, Aug. 7, 1974, as amended by Amdt. 14, 41 FR 31174, July 27, 1976]

### §215.6 Use of funds.

(a) Federal funds made available under the Program shall be used to encourage the consumption of milk through reimbursement payments to schools and child-care institutions in connection with the purchase and service of milk to children in accordance with the provisions of this part: *Provided, however*, That, with the approval of FNS, any State agency, or FNSRO where applicable, may reserve for use in carrying out special developmental projects an amount equal to not more than 1 per centum of the Federal funds so made available for any fiscal year.

(b) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided