

## § 226.8

## 7 CFR Ch. II (1–1–10 Edition)

(l) *Participation controls.* The State agency may establish control procedures to ensure that payment is not made for meals served to participants attending in excess of the authorized capacity of each independent center, adult day care facility or child care facility.

(m) *Financial management system.* Each State agency shall establish a financial management system in accordance with 7 CFR part 3015, 7 CFR part 3016 and 7 CFR part 3019, as applicable, and FNS guidance to identify allowable Program costs and establish standards for institutional recordkeeping and reporting. These standards shall (1) prohibit claiming reimbursement for meals provided by a participant's family, except as authorized by § 226.18(e) and (2) allow the cost of meals served to adults who perform necessary food service labor under the Program, except in day care homes. The State agency shall provide guidance on financial management requirements to each institution.

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983; Amdt. 5, 49 FR 18988, May 4, 1984; 50 FR 8580, Mar. 4, 1985; 50 FR 26975, July 1, 1985; 53 FR 52589, Dec. 28, 1988; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 63 FR 9728, Feb. 26, 1998; 67 FR 43490, June 27, 2002; 69 FR 53542, Sept. 1, 2004; 71 FR 5, Jan. 3, 2006; 71 FR 39518, July 13, 2006; 72 FR 41606, July 31, 2007]

### § 226.8 Audits.

(a) Unless otherwise exempt, audits at the State and institution levels must be conducted in accordance with Office of Management and Budget circular A-133 and the Department's implementing regulations at part 3052 of this title. State agencies must establish audit policy for for-profit institutions. However, the audit policy established by the State agency must not conflict with the authority of the State agency or the Department to perform, or cause to be performed, audits, reviews, agreed-upon procedures engagements, or other monitoring activities.

(b) The funds provided to the State agency under § 226.4(j) may be made available to institutions to fund a portion of organization-wide audits made in accordance with part 3052 of this title. The funds provided to an institution for an organization-wide audit

must be determined in accordance with § 3052.230(a) of this title.

(c) Funds provided under § 226.4(j) may be used by the State agency to conduct program-specific audits of institutions not subject to organization-wide audits, or for which the State agency considers program specific audits to be needed. The State agency may use any funds remaining after all required program-specific audits have been performed to conduct administrative reviews or agreed-upon procedures engagements of institutions.

(d) Funds provided under § 226.4(j) may only be obligated during the fiscal year for which those funds are allocated. If funds provided under § 226.4(i) are not sufficient to meet the requirements of this section, the State agency may then use available State administrative expense funds to conduct audits, provided that the State agency is arranging for the audits and has not passed the responsibility down to the institution.

(e) 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 evidence of violations of criminal law or civil fraud statutes.

(f) While OIG shall rely to the fullest extent feasible upon State sponsored audits, OIG may, whenever it considers necessary:

- (1) Make audits on a statewide basis;
- (2) Perform on-site test audits;
- (3) Review audit reports and related working papers of audits performed by or for State agencies.

(g) State agencies are not required to provide a hearing to an institution for State actions taken on the basis of a Federal audit determination. If a State agency does not provide a hearing in such situations, FNS will provide a

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hearing, upon request, in accordance with procedures set forth in § 226.6(k).

[47 FR 36527, Aug. 20, 1982, as amended at 50 FR 8580, Mar. 4, 1985; 51 FR 4295, Feb. 4, 1986; 52 FR 5526, Feb. 25, 1987; 53 FR 52590, Dec. 28, 1988; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 67 FR 43490, June 27, 2002; 69 FR 53543, Sept. 1, 2004; 70 FR 43261, July 27, 2005; 71 FR 5, Jan. 3, 2006; 71 FR 30563, May 30, 2006; 72 FR 41607, July 31, 2007]

### Subpart D—Payment Provisions

#### § 226.9 Assignment of rates of reimbursement for centers.

(a) The State agency shall assign rates of reimbursement, not less frequently than annually, on the basis of family-size and income information reported by each institution. However, no rates should be assigned for emergency shelters and at-risk afterschool care centers. Assigned rates of reimbursement may be changed more frequently than annually if warranted by changes in family-size and income information. Assigned rates of reimbursement shall be adjusted annually to reflect changes in the national average payment rates.

(b) Except for emergency shelters and at-risk afterschool care centers, the State agency must either:

(1) Require that institutions submit each month's figures for meals served daily to participants from families meeting the eligibility standards for free meals, to participants from families meeting the eligibility standards for reduced-price meals, and to participants from families not meeting such guidelines; or

(2) Establish claiming percentages, not less frequently than annually, for each institution on the basis of the number of enrolled participants eligible for free, reduced-price, and paid meals, except that children who only participate in emergency shelters or the at-risk afterschool snack component of the Program must not be considered to be enrolled participants for the purpose of establishing claiming percentages; or

(3) Determine a blended per-meal rate of reimbursement, not less frequently than annually, by adding the products obtained by multiplying the applicable national average payment

rate of reimbursement for each category (free, reduced-price, paid) by the claiming percentage for that category.

(c) States have two methods of reimbursing institutions. The method chosen by the State agency must be applied to all institutions participating in the Program in that State. These methods are:

(1) Meals times rates payment, which involves reimbursing an institution for meals served at the assigned rate for each meal. This method entails no comparison to the costs incurred by the institution for the meal service; and,

(2) Meals times rates or actual costs, whichever is the lesser, which involves reimbursing an institution for meals served at the assigned rate for each meal or at the level of the costs actually incurred by the institution for the meal service. This method does entail a comparison of the costs incurred to the meal rates, with the costs being a limiting factor on the level of reimbursement an institution may receive.

(d) In those States where the State agency has chosen the option to implement a meals times rates payment system State-wide, the State agency may elect to pay an institution's final claim for reimbursement for the fiscal year at higher reassigned rates of reimbursement for lunches and suppers; however, the reassigned rates may not exceed the applicable maximum rates of reimbursement established under § 210.11(b) of the National School Lunch Program regulations. In those States which use the method of comparing meals times rates or actual costs, whichever is lesser, the total payments made to an institution shall not exceed the total net costs incurred for the fiscal year.

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983; 53 FR 52590, Dec. 28, 1988; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 71 FR 5, Jan. 3, 2006; 72 FR 41607, July 31, 2007]

#### § 226.10 Program payment procedures.

(a) If a State agency elects to issue advance payments to all or some of the participating institutions in the State, it must provide such advances no later than the first day of each month to those eligible institutions electing to receive advances in accordance with