

Food and Nutrition Service, USDA

§ 210.28

the school food authority or a school under its agreement has:

(i) Failed to correct severe mismanagement of this Program or a Child Nutrition Program under parts 225 or 226 of this chapter;

(ii) Disregarded a Program requirement of which the school food authority or school had been informed; or

(iii) Failed to correct repeated violations of Program requirements under this part or under parts 225 or 226 of this chapter.

(2) FNS may direct the State agency to establish a fine against any school food authority when it has determined that the school food authority or school meets the criteria set forth under paragraph (b)(1) of this section.

(3) Funds used to pay fines established under this paragraph must be derived from non-Federal sources. The State agency must calculate the fine based on the amount of Program reimbursement earned by the school food authority or school for the most recent fiscal year for which full year data is available, provided that the fine does not exceed the equivalent of:

(i) For the first fine, 1 percent of the amount of meal reimbursement earned for the fiscal year;

(ii) For the second fine, 5 percent of the amount of meal reimbursement earned for the fiscal year; and

(iii) For the third or subsequent fine, 10 percent of the amount of meal reimbursement earned for the fiscal year.

(4) The State agency must inform FNS at least 30 days prior to establishing the fine under this paragraph. The State agency must send the school food authority written notification of the fine established under this paragraph and provide a copy of the notification to FNS. The notification must:

(i) Specify the violations or actions which constitute the basis for the fine and indicate the amount of the fine;

(ii) Inform the school food authority that it may appeal the fine and advise the school food authority of the appeal procedures established under §210.18(p);

(iii) Indicate the effective date and payment procedures should the school food authority not exercise its right to appeal within the specified timeframe.

(5) Any school food authority subject to a fine under paragraph (b)(1) of this

section may appeal the State agency's determination. In appealing a fine, the school food authority must submit to the State agency any pertinent information, explanation, or evidence addressing the Program violations identified by the State agency. Any school food authority seeking to appeal the State agency determination must follow State agency appeal procedures.

(6) The decision of the State agency review official is final and not subject to further administrative or judicial review. Failure to pay a fine established under this paragraph may be grounds for suspension or termination.

(7) Money received by the State agency as a result of a fine established under this paragraph against a school food authority and any interest charged in the collection of these fines must be remitted to FNS, and then remitted to the United States Treasury.

[88 FR 57847, Aug. 23, 2023]

§ 210.27 Educational prohibitions.

In carrying out the provisions of the Act, the Department shall not impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, or materials of instruction in any school as a condition for participation in the Program.

[53 FR 29147, Aug. 2, 1988. Redesignated at 56 FR 32948, July 17, 1991, as amended at 64 FR 50741, Sept. 20, 1999]

§ 210.28 Pilot project exemptions.

Those State agencies or school food authorities selected for the pilot projects mandated under section 18(d) of the Act may be exempted by the Department from some or all of the counting and free and reduced price application requirements of this part and 7 CFR part 245, as necessary, to conduct an approved pilot project. Additionally, those schools selected for pilot projects that also operate the School Breakfast Program (7 CFR part 220) and/or the Special Milk Program for Children (7 CFR part 215), may be exempted from the counting and free and reduced price application requirements mandated under these Programs. The Department shall notify the appropriate State agencies and