

## Food and Nutrition Service, USDA

## § 210.29

failed to comply with the provisions of this part. Program payments shall be withheld until the school food authority takes corrective action satisfactory to the State agency, or gives evidence that such corrective action will be taken, or until the State agency terminates the grant in accordance with § 210.25 of this part. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any lunches served in accordance with the provisions of this part during the period the payments were withheld.

[56 FR 32948, July 17, 1991, as amended at 71 FR 39516, July 13, 2006; 72 FR 61492, Oct. 31, 2007; 81 FR 66488, Sept. 28, 2016]

### § 210.25 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FNS. FNS and the State agency shall comply with the provisions of 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415 concerning grant suspension, termination and closeout procedures. Furthermore, the State agency shall apply these provisions, as applicable, to suspension or termination of the Program in school food authorities.

[53 FR 29147, Aug. 2, 1988. Redesignated at 56 FR 32948, July 17, 1991, and amended at 71 FR 39516, July 13, 2006; 81 FR 66488, 66490, Sept. 28, 2016]

### § 210.26 Penalties.

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 if such funds, assets, or property are of a value of \$100 or more, be fined no more than \$25,000 or imprisoned not more than 5 years or both; or 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 1 year or both. Whoever receives, conceals, or retains for personal 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.

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

### § 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 school food authorities of its determination of which requirements are exempted after the Department's selection of pilot projects.

[55 FR 41504, Oct. 12, 1990. Redesignated at 56 FR 32948, July 17, 1991, And further redesignated at 64 FR 50741, Sept. 20, 1999]

### § 210.29 Management evaluations.

(a) *Management evaluations.* FNS will conduct a comprehensive management

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evaluation of each State agency's administration of the National School Lunch Program.

(b) *Basis for evaluations.* FNS will evaluate all aspects of State agency management of the Program using tools such as State agency reviews as required under § 210.18 of this part; reviews conducted by FNS in accordance with § 210.18 of this part; FNS reviews of school food authorities and schools authorized under § 210.19(a)(4) of this part; follow-up actions taken by the State agency to correct violations found during reviews; FNS observations of State agency reviews; and audit reports.

(c) *Scope of management evaluations.* The management evaluation will determine whether the State agency has taken steps to ensure school food authority compliance with Program regulations, and whether the State agency is administering the Program in accordance with Program requirements and good management practices.

(1) *Local compliance.* FNS will evaluate whether the State agency has actively taken steps to ensure that school food authorities comply with the provisions of this part.

(2) *State agency compliance.* FNS will evaluate whether the State agency has fulfilled its State level responsibilities, including, but not limited to the following areas: use of Federal funds; reporting and recordkeeping; agreements with school food authorities; review of food service management company contracts; review of the claims payment process; implementation of the State agency's monitoring responsibilities; initiation and completion of corrective action; recovery of overpayments; disallowance of claims that are not properly payable; withholding of Program payments; oversight of school food authority procurement activities; training and guidance activities; civil rights; and compliance with the State Administrative Expense Funds requirements as specified in 7 CFR part 235.

(d) *School food authority reviews.* FNS will examine State agency administration of the Program by reviewing local Program operations. When conducting these reviews under paragraph (d)(2) of this section, FNS will follow all the administrative review requirements spec-

ified in § 210.18(a)–(h) of this part. When FNS conducts reviews, the findings will be sent to the State agency to ensure all the needed follow-up activity occurs. The State agency will, in all cases, be invited to accompany FNS reviewers.

(1) *Observation of State agency reviews.* FNS may observe the State agency conduct of any review as required under this part. At State agency request, FNS may assist in the conduct of the review.

(2) *Section 210.18 reviews.* FNS will conduct administrative reviews in accordance with § 210.18(a)–(h) of this part which will count toward meeting the State agency responsibilities identified under § 210.18 of this part.

(3) *School food authority appeal of FNS findings.* When administrative or follow-up review activity conducted by FNS in accordance with the provisions of paragraph (d)(2) of this section results in the denial of all or part of a Claim for Reimbursement or withholding of payment, a school food authority may appeal the FNS findings by filing a written request with the Chief, Administrative Review Branch, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia, 22302, in accordance with the appeal procedures specified in this paragraph:

(i) The written request for a review of the record shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding payment and the envelope containing the request shall be prominently marked "REQUEST FOR REVIEW". FNS will acknowledge the receipt of the request for appeal within 10 calendar days. The acknowledgement will include the name and address of the FNS Administrative Review Officer (ARO) reviewing the case. FNS will also notify the State agency of the request for appeal.

(ii) The appellant may refute the action specified in the notice in person and by written documentation to the ARO. In order to be considered, written documentation must be filed with the ARO not later than 30 calendar days after the appellant received the notice.

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The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the ARO, unless the ARO agrees to reschedule the hearing. A representative of FNS shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the ARO;

(iii) If the appellant has requested a hearing, the appellant shall be provided with a least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date, and place of the hearing;

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

(v) The ARO 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;

(vi) The ARO shall make a determination based on information provided by FNS and the appellant, and on Program regulations;

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

(viii) The action being appealed shall remain in effect during the appeal process;

(ix) The determination by the ARO is the final administrative determination to be afforded to the appellant.

(4) *Coordination with State agency.* FNS will coordinate school food authority selection with the State agency

to ensure that no unintended overlap exists and to ensure reviews are conducted in a consistent manner.

(e) *Management evaluation findings.* FNS will consider the results of all its review activity within each State, including school food authority reviews, in performing management evaluations and issuing management evaluation reports. FNS will communicate the findings of the management evaluation to appropriate State agency personnel in an exit conference. Subsequent to the exit conference, the State agency will be notified in writing of the management evaluation findings and any needed corrective actions or fiscal sanctions in accordance with the provisions § 210.25 of this part and/or 7 CFR part 235.

[56 FR 32949, July 17, 1991, as amended at 57 FR 38586, Aug. 26, 1992. Redesignated at 64 FR 50741, Sept. 20, 1999, as amended at 81 FR 50193, July 29, 2016]

### § 210.30 School nutrition program professional standards.

(a) *General.* School food authorities that operate the National School Lunch Program, or the School Breakfast Program (7 CFR part 220), must establish and implement professional standards for school nutrition program directors, managers, and staff, as defined in § 210.2.

(b) *Minimum standards for all school nutrition program directors.* Each school food authority must ensure that all newly hired school nutrition program directors meet minimum hiring standards and ensure that all new and existing directors have completed the minimum annual training/education requirements for school nutrition program directors, as set forth below:

(1) *Hiring standards.* All school nutrition program directors hired on or after July 1, 2015, must meet the following minimum educational requirements, as applicable:

(i) *School nutrition program directors with local educational agency enrollment of 2,499 students or fewer.* Directors must meet the requirements in paragraph (b)(1)(i)(A), (B), (C), or (D) of this section. However, a State agency may approve a school food authority to use