

Food and Nutrition Service, USDA

§ 215.15

the geographic preference option will be applied.

(Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 27, 48 FR 19355, Apr. 29, 1983, as amended at 71 FR 39516, July 13, 2006; 72 FR 61492, Oct. 31, 2007; 76 FR 22607, Apr. 22, 2011; 81 FR 66490, Sept. 28, 2016]

§ 215.15 Withholding payments and establishing fines.

(a) *Withholding payments.* In accordance with Departmental regulations 2 CFR 200.338 through 200.342, the State agency must withhold Program payments, in whole or in part, from any school food authority which has failed to comply with the provisions of this part. Program payments must be withheld until the school food authority takes corrective action satisfactory to the State agency, or gives evidence that such corrective actions will be taken, or until the State agency terminates the grant in accordance with § 215.16. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any milk served in accordance with the provisions of this part during the period the payments were withheld.

(b) *Fines.* (1) The State agency may establish a fine against any school food authority when it has determined that the school food authority or a school under its agreement has:

- (i) Failed to correct severe mismanagement of the Program;
- (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.

(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 a fine 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 reimbursement for milk earned for the fiscal year;

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

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

(4) The State agency must inform FNS at least 30 days prior to establishing a 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) of this chapter;

(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 57848, Aug. 23, 2023]