

## Food and Nutrition Service, USDA

## § 220.7

(b) 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—

(1) If such funds, assets, or property are of a value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than 5 years or both; or

(2) 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 one year or both.

(c) Whoever receives, conceals, or retains to his 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 provided in paragraph (b) of this section.

(Sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 10(d)(3), Pub. L. 95-627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626)

[40 FR 30923, July 24, 1975, as amended by Amdt. 25, 41 FR 34759, Aug. 17, 1976; Amdt. 28, 44 FR 37899, June 29, 1979; 64 FR 50742, Sept. 20, 1999]

### § 220.7 Requirements for participation.

(a) The School Food Authority shall make written application to the State agency, or FNSRO where applicable, for any school in which it desires to operate the School Breakfast Program, if such school did not participate in the Program in the prior fiscal year. The School Food Authority shall also submit for approval, either with the application or at the request of the State agency, or FNSRO where applicable, a free and reduced price policy statement in accordance with part 245 of this chapter. A School Food Authority which simultaneously makes application for the National School Lunch Program and the School Breakfast Program shall submit one free and reduced price policy statement which shall provide that the terms, conditions, and eligibility criteria set forth in such policy statement shall apply to the service of free and reduced price lunches and to the service of free and reduced price breakfasts. If, at the

time application is made for the School Breakfast Program, a School Food Authority has an approved free and reduced price policy statement on file with the State agency, or FNSRO where applicable, for the National School Lunch Program, it need only confirm in writing that such approved policy statement will also apply to the operation of its School Breakfast Program. Applications for the School Breakfast Program shall not be approved in the absence of an approved free and reduced price policy statement.

(a-1) A school which also either participates in the National School Lunch Program or only receives donations of commodities for its nonprofit lunch program under the provisions of part 250 of this chapter (commodity only school) shall apply the same set of eligibility criteria so that children who are eligible for free lunches shall also be eligible for free breakfasts and children who are eligible for reduced price lunches shall also be eligible for reduced price breakfasts.

(a-2) Schools shall, at least once during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections. However, this requirement shall not apply to a school if a food safety inspection of the school is required by a State or local governmental agency responsible for food safety inspections.

(b) Applications shall solicit information in sufficient detail to enable the State agency to determine whether the School Food Authority is eligible to participate in the Program and extent of the need for Program payments.

(c) Within the funds available to them, State agencies, or FNSRO's where applicable, shall approve for participation in the School Breakfast Program any school making application and agreeing to carry out the program in accordance with this part. State agencies, or FNSRO's where applicable, have a positive obligation, however, to extend the benefits of the School Breakfast Program to children attending schools in areas where poor economic conditions exist.

(d) Any School Food Authority may employ a food service management

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company (or other nonprofit agency or nonprofit organization) in the conduct of its feeding operation in one or more of its schools. A School Food Authority that employs a food service management company shall remain responsible for seeing that the feeding operation is in conformance with its agreement with the State Agency or the FNS Regional Office. The contract between the School Food Authority and the food service management company shall expressly provide that:

(1) The food service management company shall maintain such records (supported by invoices, receipts, or other evidence) as the School Food Authority will need to meet its responsibilities under this part, and shall report thereon to the School Food Authority promptly at the end of each month;

(2) Any federally donated commodities received by the School Food Authority and made available to the food service management company shall enure only to the benefit to the School Food Authority's nonprofit school food service and be utilized therein; and

(3) The books and records of the food service management company pertaining to the School Food Authority's feeding operation shall be available for a period of 3 years from the date of the submission of the final Financial Status Report, for inspection and audit by representatives of the State agency, of the Department, and of the General Accounting Office at any reasonable time and place, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(e) Each school food authority approved to participate in the program shall enter into a written agreement with the State agency or the Department through the FNSRO, as applicable, that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State agency or the FNSRO to suspend or terminate the agreement in accordance with §220.18. If a single State agency administers any combination of the Child Nutrition Programs, that State agency shall provide each SFA with a single agreement with respect

to the operation of those programs. Such agreements shall provide that the School Food Authority shall, with respect to participating schools under its jurisdiction:

(1)(i) Maintain a nonprofit school food service; (ii) in accordance with the financial management system established under §220.13(i) of this part, use all revenues received by such food service only for the operation or improvement of that food service *Except that*, facilities, equipment, and personnel support with funds provided to a school food authority under this part may be used to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*); (iii) revenues received by the nonprofit school food service shall not be used to purchase land or buildings or to construct buildings; (iv) limit its net cash resources to an amount that does not exceed three months average expenditure for its nonprofit school food service or such other amount as may be approved by the State agency; and (v) observe the limitations on any competitive food service as set forth in §220.12 of this part;

(2) Serve breakfasts which meet the minimum requirements prescribed in §220.8, during a period designated as the breakfast period by the school;

(3) Price the breakfast as a unit;

(4) Supply breakfast without cost or at reduced price to all children who are determined by the School Food Authority to be unable to pay the full price thereof in accordance with the free and reduced price policy statements approved under part 245 of this chapter;

(5) Make no discrimination against any child because of his inability to pay the full price of the breakfasts;

(6) Claim reimbursement at the assigned rates only for breakfasts served in accordance with the agreement;

(7) Submit Claims for Reimbursement in accordance with §220.11 of this part and procedures established by the State agency, or FNSRO where applicable;

(8) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(9) Purchase, in as large quantities as may be efficiently utilized in its nonprofit school food service, foods designated as plentiful by the State Agency, or CFPDO, where applicable;

(10) Accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department;

(11) Maintain necessary facilities for storing, preparing, and serving food;

(12) Maintain a financial management system as prescribed by the State agency, or FNSRO where applicable;

(13) Upon request, make all accounts and records pertaining to its nonprofit school food service available to the State agency, to FNS and to OA for audit or review at a reasonable time and place. Such records shall be retained for a period of three years after the end of the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit;

(14) Retain the individual application for free and reduced price breakfasts submitted by families for a period of three years after the end of the fiscal year to which they pertain; and

(15) Comply with the requirements of the Department's regulations respecting nondiscrimination (7 CFR part 15).

(f) Nothing contained in this part shall prevent the State Agency from imposing additional requirements for participation in the program which are not inconsistent with the provisions of this part.

(44 U.S.C. 3506; sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757); Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-647, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[32 FR 34, Jan. 5, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 220.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 220.8 What are the nutrition standards and menu planning approaches for breakfasts?

(a) *What are the nutrition standards for breakfasts for children age 2 and over?*

School food authorities must ensure that participating schools provide nutritious and well-balanced breakfasts. For children age 2 and over, breakfasts, when averaged over a school week, must meet the nutrition standards and the appropriate nutrient and calorie levels in this section. The nutrition standards are:

(1) Provision of one-fourth of the Recommended Dietary Allowances (RDA) for protein, calcium, iron, vitamin A and vitamin C in the appropriate levels (see paragraphs (b), (c), (e)(1), or (h) of this section);

(2) Provision of the breakfast energy allowances (calories) for children in the appropriate levels (see paragraphs (b), (c), (e)(1), or (h) of this section);

(3) These applicable recommendations of the 1995 Dietary Guidelines for Americans:

- (i) Eat a variety of foods;
- (ii) Limit total fat to 30 percent of total calories;
- (iii) Limit saturated fat to less than 10 percent of total calories;
- (iv) Choose a diet low in cholesterol;
- (v) Choose a diet with plenty of grain products, vegetables, and fruits; and
- (vi) Choose a diet moderate in salt and sodium.

(4) These measures of compliance with the applicable recommendations of the 1995 Dietary Guidelines for Americans:

- (i) Limit the percent of calories from total fat to 30 percent of the actual number of calories offered;
- (ii) Limit the percent of calories from saturated fat to less than 10 percent of the actual number of calories offered;
- (iii) Reduce sodium and cholesterol levels; and
- (iv) Increase the level of dietary fiber.

(5) School food authorities have several ways to plan menus. The minimum levels of nutrients and calories that breakfasts must offer depends on the menu planning approach used and the age/grades served. The menu planning approaches are: