

§215.13

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amount of the claim, reclaim, or overpayment.

(f) The amounts recovered by the State Agency from schools and child-care institutions may be utilized, first, to make reimbursement payments for milk served during the fiscal year for which the funds were initially available, and second, to repay any State funds expended in the reimbursement of claims under the program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of §215.5(c).

(g) With respect to schools or child-care institutions in which FNSRO administers the Program, when FNSRO disallows a claim or a portion of a claim, or makes a demand for refund of an alleged overpayment, it shall notify the School Food Authority or child-care institutions of the reasons for such disallowance or demand and the School Food Authority or child-care institutions shall have full opportunity to submit evidence or to file reclaim for any amount disallowed or demanded in the same manner afforded in this section to schools or child-care institutions administered by State Agencies.

(h) The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claims arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

(47 FR 745, Jan. 7, 1982 (44 U.S.C. 3506; secs. 804, 816 and 817, Pub. L. 97-35; 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785))

[32 FR 12587, Aug. 31, 1967, as amended by Amdt. 5, 37 FR 14686, July 22, 1972; Amdt. 13, 39 FR 28418, Aug. 7, 1974; Amdt. 14, 41 FR 31175, July 27, 1976; 47 FR 745, Jan. 7, 1982; Amdt. 24, 47 FR 14133, Apr. 2, 1982]

§215.13 Management evaluations and audits.

(a) State agencies and school food authorities shall comply with the re-

quirements of part 3015 of this title concerning the audit requirements for recipients and subrecipients of the Department's financial assistance.

(b) These requirements call for organization-wide financial and compliance audits to ascertain whether financial operations are conducted properly; financial statements are presented fairly; recipients and subrecipients comply with the laws and regulations that affect the expenditures of Federal funds; recipients and subrecipients have established procedures to meet the objectives of federally assisted programs; and recipients and subrecipients are providing accurate and reliable information concerning grant funds. States and school food authorities shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in part 3015 of this title.

(c) Each State agency shall provide FNS with full opportunity to conduct management evaluations (including visits to schools and child-care institutions) of any operations of the State agency under the Program and shall provide OA with full opportunity to conduct audits (including visits to schools and child-care institutions) of all operations of the State agency under the Program. Each State agency shall make available its records, including records of the receipt and expenditure of funds under the Program, upon a reasonable request by FNS or OA. OA shall also have the right to make audits of the records and operations of any school or child-care institution.

(d) In conducting management evaluations, reviews or audits for any fiscal year, the State agency, FNS, or OIG may disregard any overpayment if the total overpayment does not exceed \$600 or, in the case of State agency claims in State administered Programs, it does not exceed the amount established under State law, regulations or procedure as a minimum amount for which claim will be made for State losses but not to exceed \$600. However, no overpayment is to be disregarded where

there is substantial evidence of violations of criminal law or civil fraud statutes.

(Secs. 805 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773); sec. 812, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1759a))

[Amdt. 14, 41 FR 31175, July 27, 1976, as amended at 43 FR 58925, Dec. 22, 1978; Amdt. 23, 47 FR 14135, Apr. 2, 1982; Amdt. 25, 47 FR 18564, Apr. 30, 1982; Amdt. 36, 54 FR 2990, Jan. 23, 1989; 57 FR 38586, Aug. 26, 1992; 59 FR 1894, Jan. 13, 1994; 64 FR 50742, Sept. 20, 1999]

§215.13a Determining eligibility for free milk in child-care institutions.

(a) *General.* Child care institutions which operate pricing programs may elect to make free milk available, as set forth in §215.7(d)(2), to children who meet the approved eligibility criteria. Such child care institutions shall determine the children who are eligible for free milk and assure that there is no physical segregation of, or other discrimination against, or overt identification of, children unable to pay the full price for milk.

(b) *Action by State agencies and FNSROs.* Each State agency, or FNSRO where applicable, upon application for the program by a child care institution operating a pricing program, and annually thereafter, shall require the institution to state whether or not it wishes to serve free milk to eligible children at times that milk is provided under the Program. It shall annually require each child care institution electing to provide free milk to submit a free milk policy statement and shall provide such institutions with a prototype free milk policy statement and a copy of the State's family-size income standards for determining eligibility for free meals and milk under the National School Lunch and School Breakfast Programs to assist the institutions in meeting its responsibilities.

(c) *Action by institutions.* Each child care institution which operates a pricing program shall inform the State agency, or FNSRO where applicable, at the time it applies for Program participation and at least annually thereafter, whether or not it wishes to provide free milk. Institutions electing to provide free milk shall annually submit a written free milk policy statement for determining free milk eligi-

bility of children under their jurisdiction, which shall contain the items specified in paragraph (d) of this section. Such institutions shall not be approved for Program participation of their agreements renewed unless the free milk policy has been reviewed and approved. Pending approval or a revision of a policy statement, the existing policy shall remain in effect.

(d) *Policy statement.* A free milk policy statement as required in paragraph (c) of this section shall contain the following:

(1) The specific criteria to be used in determining eligibility for free milk. These criteria shall give consideration to economic need as reflected by family size and income. The criteria used by the child-care institution may not result in the eligibility of children from families whose incomes exceed the State's family-size income standards for determining eligibility for free meals under the National School Lunch and School Breakfast Programs.

(2) The method by which the child-care institution will collect information from families in order to determine a child's eligibility for free milk.

(3) The method by which the child-care institution will collect milk payments so as to prevent the overt identification of children receiving free milk.

(4) A hearing procedure substantially like that outlined in part 245 of this chapter.

(5) An assurance that there will be no discrimination against free milk recipients and no discrimination against any child on the basis of race, color, or national origin.

(e) *Public announcement of eligibility criteria.* Each child care institution which elects to make free milk available under the Program shall annually make a public announcement of the availability of free milk to children who meet the approved eligibility criteria to the information media serving the area from which its attendance is drawn. The public announcement must also state that milk is available to all children in attendance without regard to race, color, or national origin.

(f) *Is a Privacy Act notice required on the free milk application?* Each free milk application must include substantially the following statement: "Unless you