

## Food and Nutrition Service, USDA

## § 225.13

payable if a sponsor's records do not justify all costs and meals claimed. However, the State agency shall notify the sponsor of the reasons for any disallowance or demand for repayment.

(b) Minimum State agency collection procedures for unearned payments shall include:

(1) Written demand to the sponsor for the return of improper payments;

(2) If after 30 calendar days the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments, sent by certified mail, return receipt requested;

(3) If after 60 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a third written demand for the return of improper payments, sent by certified mail, return receipt requested;

(4) If after 90 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the sponsor to the appropriate State or Federal authorities for pursuit of legal remedies.

(c) If FNS does not concur with the State agency's action in paying a sponsor or in failing to collect an overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment unless FNS determines that the State agency has conformed with this part in issuing the payment and has exerted reasonable efforts in accordance with paragraph (b) of this section to recover the improper payment.

(d) The amounts recovered by the State agency from sponsors may be utilized to make Program payments to sponsors for the period for which the funds were initially available and/or to repay the State for any of its own funds used to make payments on claims for reimbursement. Any amounts recovered which are not so utilized shall be returned to FNS in ac-

cordance with the requirements of this part.

### § 225.13 Appeal procedures.

(a) Each State agency shall establish a procedure to be followed by an applicant appealing: A denial of an application for participation; a denial of a sponsor's request for an advance payment; a denial of a sponsor's claim for reimbursement (except for late submission under § 225.9(d)(5)); a State agency's refusal to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim; a claim against a sponsor for remittance of a payment; the termination of the sponsor or a site; a denial of a sponsor's application for a site; a denial of a food service management company's application for registration, if applicable; or the revocation of a food service management company's registration, if applicable. Appeals shall not be allowed on decisions made by FNS with respect to late claims or upward adjustments under § 225.9(d)(5).

(b) At a minimum, appeal procedures shall provide that:

(1) The sponsor or food service management company be advised in writing of the grounds upon which the State agency based the action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also state that the sponsor or food service management company has the right to appeal the State's action;

(2) The sponsor or food service management company be advised in writing that the appeal must be made within a specified time and must meet the requirements of paragraph (b)(4) of this section. The State agency shall establish this period of time at not less than one week nor more than two weeks from the date on which the notice of action is received;

(3) The appellant be allowed the opportunity to review any information upon which the action was based;

(4) The appellant be allowed to refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the

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appellant within seven days of submitting the appeal, must clearly identify the State agency action being appealed, and must include a photocopy of the notice of action issued by the State agency;

(5) A hearing be held by the review official 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 appealing the action. The appellant may retain legal counsel or may be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official;

(6) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 5 days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(7) The hearing be held within 14 days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraphs (b) (4) and (5) of this section;

(8) The review official be independent of the original decision-making process;

(9) The review official make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(10) Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested;

(11) The State agency's action remain in effect during the appeal process.

However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued Program operation shall not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action; and

(12) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(c) The State agency shall send written notification of the complete appeal procedures and of the actions which are appealable, as specified in paragraph (a) of this section, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with § 225.6(g).

(d) A record regarding each review shall be kept by the State agency, as required under § 225.8(a). The record shall document the State agency's compliance with these regulations and shall include the basis for its decision.

[54 FR 18208, Apr. 27, 1989, as amended at 64 FR 72486, Dec. 28, 1999]

### Subpart C—Sponsor and Site Provisions

#### § 225.14 Requirements for sponsor participation.

(a) *Applications.* Sponsors shall make written application to the State agency to participate in the Program. Such application shall be made on a timely basis in accordance with the requirements of § 225.6(b)(1). Sponsors proposing to operate a site during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be exempt, at the discretion of the State agency, from submitting a new application if they have participated in the program at any time during the current year or in either of the prior two calendar years.