

DOCUMENT RESUME

02860 - [A2073143]

[Administrative Cost Limitation on Summer Food Service Program].
B-178564. July 19, 1977. 2 pp.

Decision re: Secretary, Department of Agriculture; by Paul G.
Dembling (for Elmer B. Staats, Comptroller General).

Issue Area: Food (1700).

Contact: Office of the General Counsel: General Government
Matters.

Budget Function: Revenue Sharing and General Purpose Fiscal
Assistance (850).

Authority: National School Lunch Act, as amended (42 U.S.C.
1761(k) (Supp. V)). 7 C.F.R. 225.7(a). B-178564 (1977).

A determination was requested concerning the propriety of amending the Department of Agriculture's regulations related to the States' liability in the Summer Food Program. Some States incurred expenses exceeding the 2% of funds allowed for administration. The statutory language expressly limits administrative expenses to 2%. Therefore, the Department of Agriculture could not amend its regulations to provide relief from liability. (Author/DJM)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-178564

DATE: July 19, 1977

**MATTER OF: Summer Food Service Program - Administrative
Cost Limitation**

DIGEST: Some States in administering the 1976 Summer Food Service Program, have incurred expenses in excess of the 2 percent of program funds authorized for the administration of the program. The statutory language expressly limits State administrative expenses to 2 percent; therefore, the Department may not amend its regulations to provide relief from liability for expenditures exceeding 2 percent, even when it can demonstrate that the State's overexpenditure benefited the program.

This decision is in response to a request from the Secretary, Department of Agriculture, for a determination concerning the propriety of amending the Department's regulations to relieve affected States of liability for administrative expenditures in excess of a statutory ceiling, and to reimburse them for administrative expenditures planned and incurred when such costs directly benefited the program.

The relevant legislative provision, section 13(k) of the National School Lunch Act, as amended, 42 U.S.C. § 1761(k) (Supp. V, 1975), currently provides:

"The Secretary shall pay to each State for administrative costs incurred pursuant to this section an amount equal to 2 percent of the funds distributed to the State under an allotment formula for total program funds."

The Department of Agriculture regulations on the subject, 7 C.F.R. § 225.7(a) contain essentially similar language.

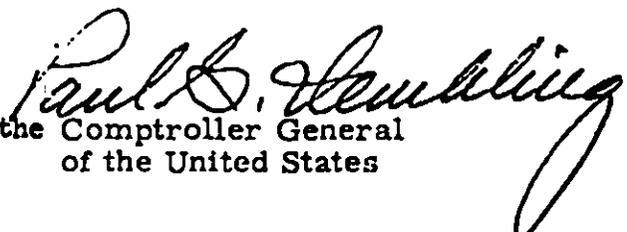
The Secretary reports that some States have exceeded their allotment, but may have done so in an apparent good faith effort to administer the program in the best way possible. The Secretary states that these extra efforts may have produced more efficient operations and lower costs, and that, in general, failure to devote sufficient effort and resources to planning and administration has resulted in program failure. He feels that under these circumstances, the State should not be penalized for its desire to improve program administration.

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The total funds a State is to receive are based on a program size estimate contained in the State's plan. The plan is submitted to and approved by the Department in February. At that time, the States begin the administrative steps necessary to assure that sufficient staff are hired and trained. As a result of these activities by State personnel in site review and monitoring, the size and cost of the total program may be reduced, thus resulting in a lower entitlement to administrative funds than anticipated when the initial expenditures were made. The Secretary states he would like to be able to reimburse the States for administrative expenses planned and incurred and to relieve them, when they acted in good faith, of any liability for overexpenditures.

The General Accounting Office (GAO) has recommended legislative changes regarding the 2 percent limitation on administrative funds for States. In our report, "The Summer Feeding Program-- How to Feed the Children and Stop Program Abuses" (CED-77-59 B-178564, April 15, 1977), we suggested that section 13(k) be amended to authorize the Secretary of Agriculture to negotiate with the States to determine a maximum amount for reimbursement of actual State administrative costs based on State-prepared budgets and plans.

Under the present statutory language, however, reimbursement of such costs is limited to 2 percent. The Department, therefore, may not amend its regulations to relieve States of liability for overexpenditures, or otherwise vary the percentage of the payment of administrative expenses, since the amount allowable for administrative expenses is expressly stated in the statute. There is no authority to issue regulations in contravention thereof.


For the Comptroller General
of the United States