

§ 235.8

under the National School Lunch Act, as amended, and the Child Nutrition Act of 1966, as amended, when such studies and surveys are authorized by the Secretary of Agriculture. The aforementioned State agencies shall encourage individual School Food Authorities, child and adult care institutions, and distributing agencies (as applicable) to participate in such studies and surveys. Distribution of State Administrative Expense funds to an individual State agency is contingent upon that State agency's cooperation in such studies and surveys.

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338 (42 U.S.C. 1776); sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); 93 Stat. 837, Pub. L. 96-108 (42 U.S.C. 1776); secs. 804, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, 1773 and 1785); sec. 7(a), Pub. L. 95-627, 92 Stat. 3622, 42 U.S.C. 1751)

[41 FR 32405, Aug. 3, 1976, as amended at 43 FR 37173, Aug. 22, 1978; 44 FR 48958, Aug. 21, 1979; 45 FR 8563, Feb. 8, 1980; Amdt. 9, 48 FR 195, Jan. 4, 1983; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 12, 49 FR 18989, May 4, 1984; Amdt. 14, 51 FR 27152, July 30, 1986; Amdt. 17, 55 FR 1378, Jan. 16, 1990; 60 FR 15463, Mar. 24, 1995]

§ 235.8 Management evaluations and audits.

(a) Each State agency shall provide for audits of State agency operations under this part to be made with reasonable frequency, but beginning in fiscal year 1978 once every two years. The audits shall determine the fiscal integrity of financial transactions and reports, and the compliance with applicable laws and regulations and with the administrative requirements set forth in 7 CFR part 3015. Audits may be made by State Auditors General, by State Controllers, or other comparable State audit groups, or by Certified Public Accountants or State licensed public accountants.

(b) Each State agency shall develop a plan for the conduct of such audits which shall (1) provide a description of the State agency in adequate detail to demonstrate the independence of the audit organization, and (2) provide a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(c) While OA shall rely to the fullest extent feasible upon State sponsored

7 CFR Ch. II (1-1-05 Edition)

audits, it shall, whenever considered necessary, (1) perform on-site test audits, and (2) review audit reports and related working papers of audits performed by or for State agencies.

(d) Use of audit guides available from OA is encouraged. When these guides are utilized, OA will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(e) Each State agency shall provide FNS with full opportunity to conduct management evaluations of all operations of the State agency under this part and shall provide OA with full opportunity to conduct audits of all such operations. Each State agency shall make available its records, including records of the receipt and expenditure of funds, upon a reasonable request by FNS, OA, or the U.S. Comptroller General.

(Sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); secs. 804, 805, 812, 814, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1754, 1756, 1759, 1759a, 1771, 1773, 1774, 1776, and 1785))

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 51186, Aug. 31, 1979; Amdt. 7, 47 FR 18567, Apr. 30, 1982; Amdt. 9, 48 FR 195, Jan. 4, 1983; 54 FR 2991, Jan. 23, 1989]

§ 235.9 Procurement and property management standards.

(a) *Requirements.* State agencies shall comply with the requirements of the Office of Management and Budget (OMB) Circular A-102 and the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart S (46 FR 55658) concerning the procurement of supplies, equipment and other services with State Administrative Expense Funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in OMB Circular A-102 and 7 CFR part 3015 do not relieve the State agency of any contractual responsibilities under its contract. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative

Food and Nutrition Service, USDA

§ 235.11

issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State or Federal authority that has proper jurisdiction.

(c) *Procurement procedure.* The State agency may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds adhere to the standards set forth in OMB Circular A-102 and 7 CFR part 3015.

(d) *Property acquired with State administrative expense funds.* State Agencies shall comply with the requirements of OMB Circular A-102 and 7 CFR part 3015, subpart R (46 FR 55654) in their utilization and disposition of property acquired in whole or in part with State Administrative Expense Funds.

(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. 9, 48 FR 19355, Apr. 29, 1983]

§ 235.10 [Reserved]

§ 235.11 Other provisions.

(a) *State funds.* Expenditures of funds from State sources in any fiscal year for the administration of the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program shall not be less than that expended or obligated in fiscal year 1977. Failure of a State to maintain this level of funding will result in the total withdrawal of SAE funds. State agencies shall follow, as applicable, the provisions of Office of Management and Budget Circular A-102, Attachments F and G and 7 CFR part 3015, subparts G and H in identifying and documenting expenditures of funds from State revenues to meet the State funding requirement of this paragraph.

(b) *Sanctions imposed.* (1) FNS may recover, withhold or cancel payment of up to one hundred (100) percent of the funds payable to a State agency under this part, whenever it is determined by FNS that the State agency has failed

to comply with the requirements contained in this part and in parts 210, 215, 220 and 226 of this title and in part 250 of this title as it applies to the operation of the Food Distribution Program in schools and child and adult care institutions.

(2) In addition to the general provisions found in paragraph (b)(1) of this section, FNS may, for any fiscal year, recover, withhold or cancel payment of up to thirty-three and one-third (33 $\frac{1}{3}$) percent of the funds payable to, and to be used by, a State agency under § 235.4(a)(1) and § 235.4(b)(3) for administration of school nutrition programs in FNS determines that a State agency is deficient in one or more of the following:

(i) Implementing the requirements in § 210.18;

(ii) Conducting the number of reviews required in § 210.18 within the timeframes specified;

(iii) Covering the areas of review set forth in the § 210.18, carrying out corrective action, and assessing and recovering claims as prescribed in § 210.18 and § 210.19 of this title;

(iv) Conducting reviews with sufficient thoroughness to identify violations of the areas of review identified in § 210.18; and

(v) Meeting the reporting deadlines prescribed for the forms (FNS-10 and SF-269) required under § 210.5(d) of this title.

(3) Furthermore, FNS may for any fiscal year, recover, withhold or cancel payment of up to thirty-three and one-third (33 $\frac{1}{3}$) percent of the funds payable to, and to be used by, a State agency under § 235.4(a)(2), § 235.4(b)(1) and § 235.4(b)(4) for administration of the Child and Adult Care Food Program if FNS determines that a State agency is deficient in meeting the reporting deadlines prescribed for the forms (FNS-44 and SF-269) required under § 226.7(d) of this title.

(4) In establishing the amounts of funds to be recovered, withheld or cancelled under paragraph (b)(2) and (b)(3) of this section, FNS shall determine the current or projected rate of funds usage by the State agency for all funds subject to sanction, and after considering the severity and longevity of the cumulative deficiencies, shall apply an