

as determined by the Secretary, to those States which administer the Food Distribution Program (part 250 of this chapter) in schools and/or institutions which participate in programs under parts 210, 220, or 226 of this chapter and to those States which administer part 226 of this chapter. The amount of funds to be allocated to each State for the Food Distribution Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to the State for the Food Distribution Program under this paragraph as the value of USDA donated foods delivered to the State for schools and institutions participating in programs under parts 210, 220 and 226 of this chapter during the second preceding fiscal year bears to the value of USDA donated foods delivered to all the States for such schools and institutions during the second preceding fiscal year. The amount of funds to be allocated to each State which administers the Child and Adult Care Food Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to all such States under this paragraph as the amount of funds allocated to each State under paragraph (a)(2) of this section bears to the amount allocated to all States under that paragraph.

(c) *SAE Funds for the Child and Adult Care Food Program.* If a State elects to have a separate State agency administer the adult care component of the Child and Adult Care Food Program, such separate State agency shall receive a pro rata share of the SAE funds allocated to the State under paragraphs (a)(2), (b)(1), and (b)(4) of this section which is equal to the ratio of funds expended by the State for the adult care component of the Child and Adult Care Food Program during the second preceding fiscal year to the funds expended by the State for the entire Child and Adult Care Food Program during the second preceding fiscal year. The remaining funds shall be allocated to the State agency administering the child care component of the Child and Adult Care Food Program.

(d) *SAE Start-up Cost Assistance for State Administration of Former ROAPs.*

For any State agency which agrees to assume responsibility for the administration of food service programs in nonprofit private schools or child and adult care institutions that were previously administered by FCS, an appropriate adjustment in the administrative funds paid under this part to the State shall be made by FCS not later than the succeeding fiscal year. Such an adjustment shall consist of an amount of start-up cost assistance, negotiated with the State agency, of no less than \$10,000 and not exceeding \$100,000, per State.

(e) *SAE Funding Reduction Upon State Agency Termination of a Food Service Program.* For any State agency which terminates its administration of any food service program for which State administrative expense funds are provided under this part, a reduction in the amount of such funds, negotiated with the State agency, shall be made by FCS.

(f) *SAE Funds for ROAPs.* FCS shall have available to it the applicable amounts provided for in paragraphs (a)(1), (a)(2), and (b)(1) of this section, and part 225 of this title, when it is responsible for the administration of a program or programs within a State.

(g) *Reallocation.* Funds allotted to State agencies under this section shall be subject to the reallocation provisions of § 235.5(d).

(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); sec. 7(a), Pub. L. 95-627, 92 Stat. 3622 (42 U.S.C. 1751); Pub. L. 96-499, secs. 201 and 204, 94 Stat. 2599; secs. 805, 812, 814 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1754, 1759a, 1774 and 1776); E.O. 12372 (July 14, 1982, 47 FR 30959); sec. 401(b) Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(c))

[44 FR 48957, Aug. 21, 1979, as amended at 44 FR 51185, Aug. 31, 1979; 44 FR 53489, Sept. 14, 1979; 45 FR 3566, Jan. 18, 1980; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 14, 51 FR 27151, July 30, 1986; Amdt. 15, 51 FR 33862, Sept. 24, 1986; Amdt. 17, 55 FR 1378, Jan. 16, 1990; 56 FR 32949, July 17, 1991; 58 FR 42489, Aug. 10, 1993; 60 FR 15462, Mar. 24, 1995]

§ 235.5 Payments to States.

(a) *Method of payment.* FCS will specify the terms and conditions of the State agency's annual grant of SAE funds in conjunction with the grant

award document and will make funds available for payment by means of a Letter of Credit issued in favor of the State agency. The total amount of a State agency's grant shall be equal to the sum of the amounts allocated to such agency under §235.4 plus or minus any adjustments resulting from the re-allocation provisions under paragraph (d) of this section plus any transfers under §235.6(a) and/or §235.6(c) of this part. The amount of SAE funds made available for payment to a State agency in any fiscal year shall be determined by FCS upon approval of the State agency's administrative plan for the fiscal year under paragraph (b) of this section and any amendments to such plan under paragraph (c) of this section. Funds shall not be made available before the State agency's plan or amendment to such plan, as applicable, has been approved by FCS. However, if the plan has not been approved by October 1 of the fiscal year, FCS may advance SAE funds to the State agency, in amounts determined appropriate by FCS, pending approval of the plan.

(b) *Administrative plan.* (1) Based on guidance provided by FCS, each State agency shall submit to FCS, by August 15 of each year, a plan for meeting its administrative responsibilities under the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program, and Food Distribution Program in schools and child and adult care institutions as applicable, for the upcoming fiscal year. If FCS determines that a State agency is unable to comply with a due date under this subparagraph, it may grant an extension to the State agency.

(2) The State agency's plan shall include its staffing pattern for State level personnel; a budget for the forthcoming fiscal year showing projected amounts (combined SAE and State funds) by cost category; the total amount of budgeted funds to be provided from State sources; the total amount of budgeted funds to be provided under this part; the State agency's estimate of the total SAE carry-over from the current fiscal year; the State agency's estimate of the total amount of budgeted funds (combined SAE and State funds) attributable to

administration of the School Nutrition Programs (National School Lunch, School Breakfast and Special Milk Programs), Child and Adult Care Food Program, and/or Food Distribution Program in schools and child and adult care institutions and to each of the major activity areas of the State agency; and the State agency's estimate of the total Child and Adult Care Food Program two percent audit funds to be used for the forthcoming fiscal year. These activity areas shall be defined and described by the State agency in accordance with guidance issued by FCS and may include such activities as program monitoring, technical assistance, Federal reporting/claims processing, policy implementation, and allocation of foods to recipient agencies.

(3) The basic guidance issued by FCS for preparation of the plan shall provide flexibility in reporting with a minimal amount of reporting burden for State agencies. Such guidance, however, may be expanded for individual State agencies in order to address specific administrative deficiencies which affect compliance with program requirements and which have been identified by FCS through management evaluations, audits or other means. Except in specific instances where determined necessary by FCS, State agencies shall not be required to maintain expenditure records by activity area or program. State agencies shall refer to Office of Management and Budget Circular A-87, Attachment B to establish cost categories. In accordance with Office of Management and Budget Circular A-102, Attachment F, State agency plans for the forthcoming fiscal year shall include not only the projected expenditures of State funds by the State agency (as required above), but also all projected expenditures of State funds by other divisions of the State that will be applied to the State funding requirement under §235.11(a) of this part.

(4) FCS shall approve a State agency's plan, or any amendment to such plan under paragraph (c) of this section, if it determines that the plan or amendment is consistent with program administrative needs and SAE requirements under this part. In approving a State agency's administrative plan or

amendment thereto, FCS shall determine the amount of SAE funds to be made available for payment to the State agency. For any fiscal year, this amount shall be based on the amount of SAE funds justified in the administrative plan as amended, but shall not exceed the total of the following: SAE funds allocated to the State agency under § 235.4 of this part for the fiscal year, any SAE funds carried over from the prior fiscal year grant, any SAE funds transferred to the State agency by another State agency within the State under § 235.6(a) and/or § 235.6(c) of this part and any SAE funds reallocated to the State agency under paragraph (d) of this section.

(5) To the extent practicable, State agencies shall implement their approved plans (as amended). FCS shall monitor State agency implementation of the plans through management evaluations, State agency reports submitted under this part, and through other available means.

(c) *Amendments to the administrative plan.* A State agency may amend its administrative plan at any time during the fiscal year to justify the need for additional SAE funds up to the limit specified in paragraph (b) of this section. Any such amendment shall provide information in a format consistent with that provided in the State agency's plan under paragraph (b) of this section and must be approved by FCS before additional SAE funds are made available for payment to the State agency. In accordance with guidance provided by FCS, a State agency shall also amend its administrative plan to reflect other changes in funding or funding needs. An amendment of this type shall also provide information in a format consistent with that provided in the State agency's plan, but shall only require FCS approval if it results in a significant reduction in funding level or level of planned activity.

(d) *Reallocation of funds.* Annually, between March 1 and May 1 on a date specified by FCS, of each year, each State agency shall submit to FCS a State Administrative Expense Funds Reallocation Report (FCS-525) on the use of SAE funds. At such time, a State agency may release to FCS any funds that have been allocated, reallocated

or transferred to it under this part or may request additional funds in excess of its current grant level. Based on this information or on other available information, FCS shall reallocate, as it determines appropriate, any funds allocated to State agencies in the current fiscal year which will not be expended in the following fiscal year and any funds carried over from the prior fiscal year which will not be expended in the current fiscal year. Reallocated funds shall be made available for payment to a State agency upon approval by FCS of the State agency's plan under this section and an amendment to such plan which covers the reallocated funds. Notwithstanding any other provision of this part, a State agency may, at any time, release to FCS for reallocation any funds that have been allocated, reallocated or transferred to it under this part and are not needed to implement its approved plan under this section.

(e) *Return of funds.* (1) In Fiscal Year 1991, up to 25 per cent of the SAE funds allocated to each State agency under § 235.4 may remain available for obligation and expenditure in the second fiscal year of the grant. In subsequent fiscal years, up to 20 percent may remain available for obligation and expenditure in the second fiscal year. The maximum amount to remain available will be calculated at the time of the formula allocation by multiplying the appropriate percentage by each State agency's formula allocation as provided under § 235.4(a) through (c). At the end of the first fiscal year, the amount subject to the retention limit is determined by subtracting the amount reported by the State agency as Total Federal share of outlays and unliquidated obligations on the fourth quarter Standard Form (SF) 269, Financial Status Report, from the total amount of SAE funds made available for that fiscal year (i.e., the formula allocation adjusted for any transfers or reallocations). However, funds provided under § 235.4(d) are not subject to the retention limit. Any funds in excess of the amount that remains available to each State agency shall be returned to FCS.

(2) At the end of the fiscal year following the fiscal year for which funds were allocated, each State agency shall

return any funds made available which are unexpended.

(3) Return of funds by the State agency shall be made as soon as practicable, but in any event, not later than 30 days following demand by FCS.

[Amdt. 14, 51 FR 27151, July 30, 1986, as amended by Amdt. 17, 55 FR 1378, Jan. 16, 1990; 60 FR 15462, Mar. 24, 1995]

§ 235.6 Use of funds.

(a) Funds allocated under this part and 7 CFR part 225 shall be used for State agency administrative costs incurred in connection with the programs governed by 7 CFR parts 210, 215, 220, 225, 226, and 250 of this title. Except as provided under § 235.6(c), funds allocated under § 235.4, paragraphs (a) and (b) and 7 CFR part 225 shall be used for the program(s) for which allocated, except that the State agency may transfer up to ten percent of the funds allocated for any such program(s) to other such program(s). Subject to the provisions of this paragraph, a State agency may also transfer SAE funds that are not needed to implement its approved plan § 235.5(b) to another State agency within the State that is eligible to receive SAE funds under this part. Up to 25 per cent of funds allocated under § 235.4(a) through (c) for Fiscal Year 1991 and up to 20 per cent of funds allocated in subsequent fiscal years to a State agency may, subject to the provisions of § 235.5 of this part, remain available for obligation and expenditure by such State agency during the following fiscal year.

(a-1) State administrative expense funds paid to any State may be used by State agencies to pay salaries, including employee benefits and travel expenses for administrative and supervisory personnel, for support services, for office equipment, and for staff development, particularly for monitoring and training of food service personnel at the local level in areas such as food purchasing and merchandizing. Such funds shall be used to employ additional personnel, as approved in the applicable State plan to supervise, improve management, and give technical assistance to school food authorities and to institutions in their initiation, expansion, and conduct of any programs for which the funds are made

available. State agencies may also use these funds for their general administrative expenses in connection with any such programs, including travel and related expenses. Additional personnel or part-time personnel hired are expected to meet professional qualifications and to be paid at salary scales of positions of comparable difficulty and responsibility under the State agency. Personnel may be used on a staff year equivalent basis, thus permitting new personnel and existing staff to be cross-utilized for most effective and economical operation under existing and new programs.

(a-2) State Administrative Expense Funds paid to any State agency under § 235.4(b)(3) shall be available for reviews conducted under § 210.18 or § 210.18a of this title activities associated with carrying out actions to ensure adherence to the program performance standards.

(b) State administrative expense funds shall be used consistent with the cost principles and constraints on allowable and unallowable costs and indirect cost rates as prescribed in Office of Management and Budget Circular A-87.

(c) In addition to State Administrative Expense funds made available specifically for food distribution purposes under § 235.4 (b)(2) and (b)(4), State Administrative Expense funds allocated under § 235.4 (a)(1), (a)(2), (b)(1), (b)(3), and (d), and under (b)(4) for the Child and Adult Care Food Program may be used to assist in the administration of the Food Distribution Program (7 CFR part 250) in schools and institutions which participate in programs governed by parts 210, 220, and 226 of this title when such Food Distribution Program is administered within the State agency and may also be used to pay administrative expenses of a distributing agency, when such agency is other than the State agency and is responsible for administering all or part of such Food Distribution Program.

(d) FCS shall allocate, for the purpose of providing grants on an annual basis to public entities and private nonprofit organizations participating in projects under section 18(c) of the National School Lunch Act, not more than \$4,000,000 in each of Fiscal Years