

improper distribution, loss of or damage to commodities, and shall make a claim determination within 30 days of the receipt of information, as described in further detail in FCS Instruction 410-1, *Non-Audit Claims—Food Distribution*. The funds received from the collection of claims shall be returned to FCS. In instances in which it has been determined by the Department that the collection of funds will have a significant adverse effect on the operation of the program, the Department may permit in-kind replacement of the donated foods in lieu of payment to FCS. Replacement in kind will only be permitted under such terms and conditions as agreed to by the Secretary.

(2) If the State agency itself causes the loss of commodities and the value exceeds \$250, the State agency shall immediately transmit the claim determination to the FCS Regional Office, fully documented as to facts and findings. Except as provided in paragraph (1)(4) of this section, if the State agency itself causes the loss of commodities, and the value does not exceed \$250, the State agency shall immediately return funds equal to the claim amount to FCS.

(3) If the State agency determines that a claim exists against an emergency feeding organization, warehouseman, carrier or any other entity and the value of the lost commodities exceeds \$2500, the State agency shall immediately transmit the claim determination to the appropriate FCS Regional Office, fully documented as to facts and findings. If FCS determines from its review of the claim determination that a claim exists, the State agency shall make demand for restitution upon the entity liable immediately upon receipt of notice from the FCS Regional Office. Except as provided in paragraph (1)(4) of this section, if the State agency determines that a claim exists in favor of the State agency against an emergency feeding organization, warehouseman, carrier or any other entity and the value of the lost commodities does not exceed \$2500, the State agency shall immediately proceed to collect the claim.

(4) No claim determination shall be required where the value of the lost commodities is \$100 or less. However,

no such claim shall be disregarded where:

(i) There is evidence of fraud or a violation of Federal, State or local criminal law; or

(ii) Program operations would be adversely affected.

(5) The State agency shall maintain records and substantiating documents, on all claims actions and adjustments including documentation of those cases in which no claim was asserted because of the minimal amount involved.

(6) In making final claim determinations for commodity losses incurred by emergency feeding organizations when there is no evidence of fraud or negligence, State agencies and FCS Regional Offices, as applicable, shall consider the special needs and circumstances of the emergency feeding organizations, and adjust the claim and/or conditions for claim collection as appropriate. These special needs and circumstances include but are not limited to the emergency feeding organization's use of volunteers and limited financial resources and the effect of the claim on the organization's ability to meet the food needs of low-income populations.

(Approved by the Office of Management and Budget under control number 0584-0313 and 0584-0341)

[51 FR 12823, Apr. 16, 1986, as amended at 52 FR 17933, May 13, 1987; 52 FR 42634, Nov. 6, 1987; 59 FR 16974, Apr. 11, 1994]

§ 251.5 Eligibility determinations.

(a) *Eligible emergency feeding organizations.* Prior to making distribution to these agencies, the State agency shall determine that they are eligible as emergency feeding organizations under this part and shall enter into agreements in accordance with § 251.2(b) of this chapter when such agreements have not already been entered into.

(b) *Criteria for determining recipient eligibility.* Each State agency shall establish criteria for determining the eligibility of households to receive commodities provided under this part for household use. The criteria must enable the State to ensure that only households who are in need of food assistance because of inadequate household income receive commodities. The

criteria shall include income-based standards and the methods by which households may demonstrate eligibility under such standards and may include a requirement that the household reside in the State, provided that length of residency is not used as an eligibility criterion.

§251.6 Distribution plan.

(a) *Contents of the plan.* The State agency shall submit for approval by the appropriate FCS Regional Office a plan which contains:

(1) A description of the criteria established in accordance with §251.5(b) for determining that applicant households are in need of food assistance under this part;

(2) The rates for distributing commodities to households in accordance with §251.4(d)(3);

(3) A description of the program monitoring system including a detailed explanation of any factors which may contribute to the State requesting approval of exceptions to conducting the minimum number of reviews required by §251.10(e);

(4) A description of the State's formula for allocating administrative funds among State agencies and emergency feeding organizations, including, if applicable, soup kitchens and food banks receiving administrative funds in connection with commodities which are made available under section 110 of the Hunger Prevention Act of 1988 in accordance with §251.8(d)(1); and

(5) A description of the State's contribution toward the matching requirements as described under §251.9(e).

(b) *Plan submission.* For Fiscal Year 1986, the distribution plan must be submitted no later than the effective date of this part, and for subsequent fiscal years the plan must be submitted no later than October 1 of each year.

[51 FR 12823, Apr. 16, 1986, as amended at 51 FR 17934, May 13, 1987; 59 FR 16974, Apr. 11, 1994]

§251.7 Formula adjustments.

(a) *Commodity adjustments.* The Department will make adjustments to the commodity allocation formula for each State, based on updated unemployment statistics, as follows:

(1) *Surplus commodities.* Adjustments will be made semi-annually effective on January 1 and July 1 of each fiscal year; and

(2) *Purchased commodities.* Adjustments will be made annually and will be effective for the entire fiscal year, subject to reallocation or transfer in accordance with this part.

(b) *Funds adjustments.* The Department will make annual adjustments of the funds allocation for each State based on updated unemployment statistics. These adjustments will be effective for the entire fiscal year unless recovered, withheld, or reallocated in accordance with §251.8(e).

[51 FR 12823, Apr. 16, 1986, as amended at 59 FR 16974, Apr. 11, 1994]

§251.8 Payment of funds for administrative costs.

(a) *Availability and allocation of funds.* Funds made available to the Department for State and local costs associated with the distribution of commodities under this part shall, in any fiscal year, be distributed to each State agency on the basis of the funding formula defined in §251.3(d).

(b) *Uniform Federal Assistance Regulations.* Funds provided under this section shall be subject to the Department's regulations issued under 7 CFR part 3015.

(c) *Payment to States.* (1) Funds under this section shall be made available by means of U.S. Treasury Department checks or letters of credit in favor of the State agency. The State agency shall use any funds received without delay in accordance with paragraph (d) of this section.

(2) Upon notification by the FCS Regional Office that an agreement has been entered into in accordance with §251.2(c) of this part, FCS shall issue a grant award pursuant to FCS Instruction 407-3 (Grant Award Process), and promptly make funds available to each State agency within the State's allocation either through issuance of a letter of credit or a U.S. Treasury check pursuant to submission of the SF-270, Request for Advance or Reimbursement. State agencies shall receive funds through a letter of credit if program payments are more than \$120,000 for the year. To the extent funds are available