

feeding organizations in accordance with paragraph (d)(1) of this section.

(ii) State agencies shall not charge for commodities made available under this part to emergency feeding organizations.

(e) *Recovery and reallocation.* If, during the course of the fiscal year, the Department determines that a State agency is unable to use all of the funds allocated to it during the fiscal year, the Department shall recover or withhold and reallocate such unused funds among other States.

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

#### § 251.9 Matching of funds.

(a) *State matching requirement.* The State shall provide a cash or in-kind contribution equal to the amount of the Federal Emergency Food Assistance Program administrative funds received under § 251.8 and retained by the State agency for State-level costs. Any portion of the Federal grant passed through for administrative costs incurred at the local level or directly expended by the State agency for such local-level costs (in accordance with § 251.8(d)(3)) shall be exempt from the State match requirement.

(b) *Exceptions.* In accordance with the provisions of 48 U.S.C. 1469a, American Samoa, Guam, the Virgin Islands and the Northern Mariana Islands shall be exempt from the matching requirements of paragraph (a) of this section if their respective matching requirements are under \$200,000.

(c) *Applicable contributions.* States shall meet the requirements of paragraph (a) of this section through cash or in-kind contributions from sources other than Federal funds which are prohibited by law from being used to meet a Federally mandated State matching requirement. Such contributions shall meet the requirements set forth in 7 CFR 3016.24. In accordance with 7 CFR 3016.24(b)(1), the matching requirement shall not be met by contributions for costs supported by another Federal grant, except as provided by Federal statute. Allowable contributions are only those contributions for costs which would otherwise be allowable as State or local-level administrative costs.

(1) *Cash.* An allowable cash contribution is any cash outlay of the State agency for a specifically identifiable allowable State- or local-level administrative cost, including the outlay of money contributed to the State agency by other public agencies and institutions, and private organizations and individuals. Examples of cash contributions include, but are not limited to, expenditures for office supplies, storage space, transportation, loading facilities and equipment, employees' salaries, and other goods and services specifically identifiable as State- or local-level administrative costs for which there has been a cash outlay by the State agency.

(2) *In-kind.* (i) Allowable in-kind contributions are any contributions, which are non-cash outlays, of real property and non-expendable personal property and the value of goods and services specifically identifiable with allowable State administrative costs or, when contributed by the State agency to an emergency feeding organization, allowable local-level administrative costs. Examples of in-kind contributions include, but are not limited to, the donation of office supplies, storage space, vehicles to transport the commodities, loading facilities and equipment such as pallets and forklifts, and other non-cash goods or services specifically identifiable with allowable State-level administrative costs or, when contributed by the State agency to an emergency feeding organization, allowable local-level administrative costs. In-kind contributions shall be valued in accordance with 7 CFR 3016.24(c) through 3016.24(f).

(ii) In order for a third-party in-kind contribution to qualify as a State-level administrative cost for purposes of meeting the match, all of the following criteria shall be met:

(A) In its administration of food assistance programs, the State has performed this type of function over a sustained period of time in the past;

(B) The function was not previously performed by the State on behalf of emergency feeding organizations; and

(C) The State would normally perform the function as part of its responsibility in administering TEFAP or related food assistance programs if it

were not provided as an in-kind contribution.

(d) *Assessment fees.* States shall not assess any fees for the distribution of donated foods to emergency feeding organizations.

(e) *Plan requirements.* As a part of the State's Distribution Plan required under §251.6, State agencies shall submit for FNS Regional office approval, the State's plan for meeting the match required under paragraph (a) of this section. Such plan shall identify the estimated amount of Federal funds to be retained at the State level for State level activities, the estimated dollar value of the State's contribution, and, if applicable, a description and valuation of in-kind contributions to be applied to the State's required match. This plan may be amended at any time during the fiscal year.

(f) *Reporting requirements.* State agencies shall identify their matching contribution on the SF-269, Financial Status Report, in accordance with §251.10(d).

(g) *Failure to match.* If, during the course of the fiscal year, the quarterly SF-269 indicates that the State is or will be unable to meet the matching requirements in whole or in part, the Department shall suspend or disallow the unmatched portion of Federal funds subject to the provisions of paragraph (a) of this section. If, upon submission of the final SF-269 for the fiscal year, the Department determines that the State has not met the requirements of paragraph (a) of this section in whole or in part, the unmatched portion of Federal funds subject to the requirements of paragraph (a) of this section shall be subject to disallowance by FNS.

[52 FR 17934, May 13, 1987, as amended at 59 FR 16975, Apr. 11, 1994]

**§251.10 Miscellaneous provisions.**

(a) *Records.* (1) State agencies and emergency feeding organizations shall maintain records to document the receipt, disposal, and inventory of commodities received under this part in accordance with requirements of §250.16 of this chapter.

(2) In addition to maintaining financial records in accordance with 7 CFR part 3016, State agencies which receive

funds under this part shall maintain records to document the amount of funds paid to emergency feeding organizations for the actual storage and distribution costs incurred by any emergency feeding organization. State agencies shall ensure that emergency feeding organizations maintain records as required by this paragraph.

(3) Each distribution site shall keep accurate and complete records showing the data and method used to determine the number of eligible households served at that site.

(4) Each distribution site shall collect for each household participating in the program the name of the household member receiving commodities, the address of the household (to the extent practicable), the number of persons in the household, and the basis for determining that the household is eligible to receive commodities.

(5) All records required by this section shall be retained by the emergency feeding organization for a period of 3 years from the close of the Federal Fiscal Year to which they pertain.

(b) *Commodities not income.* In accordance with section 206 of Pub. L. 98-8, as amended, and notwithstanding any other provision of law, commodities distributed under this part shall not be considered income or resources for any purposes under any Federal, State, or local law.

(c) *Nondiscrimination.* There shall be no discrimination in the distribution of foods donated under this part because of race, color, national origin, sex, age, or handicap.

(d) *Reports.* (1) Designated State agencies shall identify funds obligated and disbursed to cover the costs associated with the program at the State and local level. State and local costs shall be identified separately. The data shall be identified on Form FNS-667, Report of Administrative Costs (TEFAP), and shall be submitted to the appropriate FNS Regional Office on a quarterly basis. The quarterly report shall be submitted no later than 30 calendar days after the end of the quarter to which it pertains. The final report shall be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.