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7 CFR Ch. II (1-1-00 Edition)

(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(h).

(b) *Uniform Federal Assistance Regulations.* Funds provided under this section shall be subject to the Department's regulations issued under 7 CFR part 3016 or part 3019, as applicable.

(c) *Payment to States.* (1) Funds under this section shall be made available by means of 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 FNS Regional Office that an agreement has been entered into in accordance with § 251.2(c) of this part, FNS shall issue a grant award pursuant to procedures established by FNS, and promptly make funds available to each State agency within the State's allocation through issuance of a letter of credit. To the extent funds are available and subject to the provisions of paragraph (f) of this section, funds will be made available to State agencies on an advance basis.

(3) Each State agency shall return to FNS any funds made available under this section either through the original allocation or through subsequent reallocations which are unobligated as of the end of the fiscal year for which they were made available. Such return shall be made as soon as practicable but in no event later than 30 days following demand made by FNS.

(d) *Priority for eligible recipient agencies distributing USDA commodities.* State agencies and eligible recipient agencies distributing administrative funds must ensure that the administra-

tive funding needs of eligible recipient agencies which receive USDA commodities are met, relative to both USDA commodities and any non-USDA commodities they may receive, before such funding is made available to eligible recipient agencies which distribute only non-USDA commodities.

(e) *Use of funds.* (1) *Allowable administrative costs.* State agencies and eligible recipient agencies may use funds made available under this part to pay the direct expenses associated with the distribution of USDA commodities and commodities secured from other sources to the extent that the commodities are ultimately distributed by eligible recipient agencies which have entered into agreements in accordance with § 251.2. Direct expenses include the following, regardless of whether they are charged to TEFAP as direct or indirect costs:

(i) The intrastate and interstate transport, storing, handling, repackaging, processing, and distribution of commodities; except that for interstate expenditures to be allowable, the commodities must have been specifically earmarked for the particular State or eligible recipient agency which incurs the cost;

(ii) Costs associated with determinations of eligibility, verification, and documentation;

(iii) Costs of providing information to persons receiving USDA commodities concerning the appropriate storage and preparation of such commodities;

(iv) Costs involved in publishing announcements of times and locations of distribution; and

(v) Costs of recordkeeping, auditing, and other administrative procedures required for program participation.

(2) *State restriction of administrative costs.* A State agency may restrict the use of TEFAP administrative funds by eligible recipient agencies by disallowing one or more types of expenses expressly allowed in paragraph (e)(1) of this section. If a State agency so restricts the use of administrative funds, the specific types of expenses the State will allow eligible recipient agencies to incur must be identified in the State agency's agreements with its eligible recipient agencies, or set forth by

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other written notification, incorporated into such agreements by reference.

(3) *Agreements.* In order to be eligible for funds under paragraph (e)(1) of this section, eligible recipient agencies must have entered into an agreement with the State agency or another eligible recipient agency pursuant to § 251.2(c).

(4) *Pass-through requirement-local support to emergency feeding organizations.*

(i) Not less than 40 percent of the Federal Emergency Food Assistance Program administrative funds allocated to the State agency in accordance with paragraph (a) of this section must be:

(A) Provided by the State agency to emergency feeding organizations that have signed an agreement with the State agency as either reimbursement or advance payment for administrative costs incurred by emergency feeding organizations in accordance with paragraph (e)(1) of this section, except that such emergency feeding organizations may retain advance payments only to the extent that they actually incur such costs; or

(B) Directly expended by the State agency to cover administrative costs incurred by, or on behalf of, emergency feeding organizations in accordance with paragraph (e)(1) of this section.

(ii) Any funds allocated to or expended by the State agency to cover costs incurred by eligible recipient agencies which are not emergency feeding organizations shall not count toward meeting the pass-through requirement.

(iii) State agencies must not charge for commodities made available under this part to eligible recipient agencies.

(f) *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; 64 FR 72906, Dec. 29, 1999]

EFFECTIVE DATE NOTE: At 64 FR 72906, Dec. 29, 1999, § 251.8 was amended by removing the reference “§ 251.3(d)” and adding in its place the reference “§ 251.3(h)” in paragraph (a); by

removing the reference “part 3015” and adding in its place the reference “part 3016 or part 3019, as applicable.” in paragraph (b); by removing the words “U.S. Treasury Department checks or” in paragraph (c)(1); by removing “FNS Instruction 407-3 (Grant Award Process)” and adding in its place “procedures established by FNS”, by removing from the first sentence the words “either” and “or a U.S. Treasury check pursuant to submission of the SF-270, Request for Advance or Reimbursement”, by removing the second sentence, and by removing the reference to “§ 251.8(e)” and in its place adding the reference to “paragraph (f) of this section” in paragraph (c)(2); by redesignating paragraphs (d) and (e) as paragraphs (e) and (f); by adding paragraph (d); and by revising newly redesignated paragraph (e), effective Feb. 28, 2000. For the convenience of the user, the superseded text follows.

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(e) *Use of funds—(1) Allowable administrative costs.* Funds made available under this part shall be used by State agencies or emergency feeding organizations only for the following administrative costs:

(i) *USDA commodities.* Funds may be used for the direct costs associated with the intrastate distribution of commodities donated under this part and under section 110 of the Hunger Prevention Act of 1988 by emergency feeding organizations. In addition, emergency feeding organizations that also receive commodities under part 250 of this chapter may use the funds provided under this part for direct costs associated with the distribution of such commodities. These costs include the costs paid by an emergency feeding organization or paid by a State agency on behalf of an emergency feeding organization for:

(A) Transporting, storing, handling, repackaging, processing, and distributing commodities incurred after they are received by the organization;

(B) Costs associated with determinations of eligibility, verification, and documentation;

(C) Costs of providing information to persons receiving USDA commodities concerning the appropriate storage and preparation of such commodities;

(D) Costs involved in publishing announcements of times and locations of distribution; and

(E) Costs of recordkeeping, auditing, and other administrative procedures required for program participation.

(ii) *Non-USDA commodities.* Funds may also be used by emergency feeding organizations for the direct costs associated with the