

Food and Nutrition Service, USDA

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(e) Where State Administrative Expense Funds are used to acquire personal property or services the provisions of §§ 235.9 and 235.10 must be observed.

(f) Each State agency shall adequately safeguard all assets and assure that they are used solely for authorized purposes.

(g) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department, shall:

(1) If such funds, assets, or property are of a value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years or both; or

(2) If such funds, assets, or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than one year or both.

(h) Whoever receives, conceals, or retains to his use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties provided in paragraph (h) of this section.

(i) *Full use of Federal funds.* States and State agencies must support the full use of Federal funds provided to State agencies for the administration of Child Nutrition Programs, and exclude such funds from State budget restrictions or limitations including hiring freezes, work furloughs, and travel restrictions.

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338, 1339, 1340 (42 U.S.C. 1751, 1753, 1759a, 1761, 1766, 1772-1775, 1776, 1786); sec. 7(a), Pub. L. 95-627, 92 Stat. 3621, 3622 (42 U.S.C. 1751, 1776))

[41 FR 32405, Aug. 3, 1976, as amended at 43 FR 37172, Aug. 22, 1978; 44 FR 37901, June 29, 1979; 44 FR 48958, Aug. 21, 1979; 44 FR 51185, Aug. 31, 1979; 45 FR 3566, Jan. 18, 1980; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 14, 51 FR 27152, July 30, 1986; 56 FR 32949, July 17, 1991; 60 FR 15462, Mar. 24, 1995; 60 FR 57148, Nov. 14, 1995; 64 FR 50744, Sept. 20, 1999; 76 FR 37983, June 29, 2011]

§ 235.7 Records and reports.

(a) Each State agency shall keep records on the expenditure of State administrative expense funds provided

under this part and part 225 of this title. Such records shall conform with the applicable State plan for use of State administrative expense funds. The State agency shall make such records available, upon a reasonable request, to FNS, OIG, or the U.S. Comptroller General and shall maintain current accounting records of State administrative expense funds which shall adequately identify fund authorizations, obligations, unobligated balances, assets, liabilities, outlays and income. The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of the submission of the final Financial Status Report, subject to the exceptions noted below:

(1) If audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(2) Records for nonexpendable property acquired with State Administrative Expense Funds shall be retained for three years after its final disposition.

(b) Each State agency shall submit to FNS a quarterly Financial Status Report (SF-269) on the use of State administrative expense funds provided for each fiscal year under this part. Reports shall be postmarked and/or submitted to FNS no later than 30 days after the end of each quarter of the fiscal year and, in case of funds carried over under § 235.6(a), each quarter of the following fiscal year until all such funds have been obligated and expended. Obligations shall be reported for the fiscal year in which they occur. Each State agency shall submit a final Financial Status Report for each fiscal year's State administrative expense funds. This report shall be postmarked and/or submitted to FNS no later than 30 days after the end of the fiscal year following the fiscal year for which the funds were initially made available. Based on guidance provided by FNS, each State agency shall also use the quarterly SF-269 to report on the use of State funds provided during the fiscal year. Each State agency shall also submit an annual report containing information on School Food Authorities

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under agreement with the State agency to participate in the National School Lunch or Commodity School programs.

(c) State agencies operating those programs governed by parts 210, 215, 220 and 226 and those State agencies which are distributing agencies eligible for SAE funds shall participate in surveys and studies of programs authorized 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) Unless otherwise exempt, audits at the State level shall be conducted in accordance with Office of Management and Budget Circular A-133, and the Department's implementing regulations at 7 CFR part 3052. (To obtain the OMB circular referenced in this definition, see 5 CFR 1310.3.)

(b) While OIG shall rely to the fullest extent feasible upon State sponsored 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.

(c) Each State agency shall provide FNS with full opportunity to conduct management evaluations of all oper-

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ations of the State agency under this part and shall provide OIG 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, OIG, 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; 71 FR 39519, July 13, 2006]

§ 235.9 Procurement and property management standards.

(a) *Requirements.* State agencies shall comply with the requirements of 7 CFR part 3016 concerning the procurement of supplies, equipment and other services with State Administrative Expense Funds.

(b) *Contractual responsibilities.* The standards contained in 7 CFR part 3016 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 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 laws and regulations, in accordance with 7 CFR part 3016.

(d) *Property acquired with State administrative expense funds.* State Agencies shall comply with the requirements of 7 CFR part 3016 in their utilization and disposition of property acquired in