period (that is, 12 months, 24 months, or permanent) specified in the notice of disqualification. The State agency must advise any remaining household members if the household's benefits will change or if the household is no longer eligible as a result of the disqualification.

(2) If the household member requested a fair hearing and the disqualification was upheld by the fair hearing official, the disqualification must begin with the next scheduled distribution of commodities that follows the date the hearing decision is issued. If the commodities are normally made available to the household within a specific period of time (for example, from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period. The State agency must apply the disqualification period (that is, 12 months, 24 months, or permanent) specified in the notice of disqualification. No further administrative appeal procedure exists after an adverse fair hearing decision. The decision by a fair hearing official is binding on the State agency. The household member, however, may seek relief in a court having appropriate jurisdiction. As provided under §253.7(h)(11)(iii)(B), the State agency must advise any remaining household members if the household's benefits will change, or if the household is no longer eligible as a result of the disqualification.

(3) Once a disqualification has begun, it must continue uninterrupted for the duration of the penalty period (that is, 12 months; 24 months; or permanent). Changes in the eligibility of the disqualified household member's household will not interrupt or shorten the disqualification period.

(4) The same act of intentional program violation continued over a period of time will not be separated so that more than one penalty can be imposed. For example, a household intentionally fails to report that a household member left the household, resulting in an overissuance of benefits for 5 months. Although the violation occurred over a period of 5 months, only one penalty will apply to this single act of intentional program violation.

(5) If the case was referred for Tribal, Federal, State, or local prosecution and the court of appropriate jurisdiction imposed a disqualification penalty, the State agency must follow the court order.

[64 FR 73384, Dec. 30, 1999]

### § 253.9 Claims against households.

(a) *What are the procedures for establishing a claim against a household for an overissuance?* (1) The State agency must establish a claim against any household that has received more Food Distribution Program commodities than it was entitled to receive.

(2) The procedures for establishing and collecting claims against households are specified in FNS Handbook 501, The Food Distribution Program on Indian Reservations.

(b) *Who is responsible for repaying a household overissuance claim?* (1) All adult household members are jointly and separately liable for the repayment of the value of any overissuance of Food Distribution Program benefits to the household.

(2) Responsibility for repayment continues even in instances where the household becomes ineligible or is not participating in the program.

[64 FR 73385, Dec. 30, 1999]

### § 253.10 Commodity control, storage and distribution.

(a) *Control and accountability.* The State agency shall be responsible for the issuance of commodities to households and the control of and accountability for the commodities upon its acceptance of the commodities at time and place of delivery.

(b) *Commodity inventories.* The State agency shall, in cooperation with the FNS Regional office, develop an appropriate procedure for determining and monitoring the level of commodity inventories at central commodity storage facilities and at each local distribution point. The State agency shall maintain the inventories at proper levels taking into consideration, among other factors, household preferences and the historical and projected volume of distribution at each site. The procedures shall provide that commodity inventories at each central storage facility and each local distribution point are not in excess, but are adequate for, an uninterrupted distribution of commodities.

(c) *Storage facilities and practices.* The State agency shall as a minimum ensure that:

(1) Adequate and appropriate storage facilities are maintained. The facilities shall be clean and neat and safe-guarded against theft, damage, insects, rodents and other pests.

(2) Department recommended dunnage, stacking and ventilation methods are followed.

(3) Commodities are stacked in a manner which facilitates an accurate inventory.

(4) Commodities are issued on a first-in, first-out basis.

(5) Commodities held in storage for a protracted period of time are reinspected prior to issuance.

(6) Out-of-condition commodities are disposed of in accordance with Department approved methods.

(7) Notification is provided to certified households of the location of distribution sites and days and hours of distribution.

(8) An adequate supply of commodities which are available from the Department is on hand at all distribution sites.

(9) Sufficient distribution sites, either stationary or mobile, are geographically located or routed in relation to population density of eligible households.

(10) Days and hours of distribution are sufficient for caseload size and convenience.

(11) Households are advised they may refuse any commodity not desired, even if the commodities are prepackaged by household size.

(12) Emergency issuance of commodities will be made to households certified for expedited service in accordance with the provisions of § 253.7(a)(9).

(13) Eligible households or authorized representatives are identified prior to the issuance of commodities.

(14) Authorized signatures are obtained for commodities issued and the issue date recorded.

(15) Posters are conspicuously displayed advising program participants to accept only those commodities, and in such quantities, as will be consumed by them.

(16) Complete and current records are kept of all commodities received, issued, transferred, and on hand and of any inventory overages, shortages, and losses.

(17) A list of commodities offered by the Department is displayed at distribution sites so that households may indicate preferences for future orders.

(d) *Distribution.* The State agency shall distribute commodities only to households eligible to receive them under this part. If the State agency uses any other agency, administration, bureau, service or similar organization to effect or assist in the certification of households or distribution of commodities, the State agency shall impose upon such organization responsibility for determining that households to whom commodities are distributed are eligible under this part. The State agency shall not delegate to any such organization its responsibilities to the Department for overall management and control of the Food Distribution Program.

(e) *Improper distribution or loss of or damage of commodities.* State agencies shall take action to obtain restitution in connection with claims arising in their favor for improper distribution, use or loss, or damage of commodities in accordance with §§ 250.13 and 250.15 of this chapter.

(f) *Damaged or out-of-condition commodities.* The State agency shall immediately notify the appropriate Food and Nutrition Service Regional Office (FNSRO) if any commodities are found to be damaged or out-of-condition at the time of arrival, or at any subsequent time, whether due to latent defects or any other reason. FNSRO shall advise the State agency of the appropriate action to be taken with regard to such commodities. If the commodities are declared unfit for human consumption in accordance with § 250.13(f) of this chapter, they shall be disposed of as provided for under that section. When out-of-condition commodities do not create a hazard to other food at the same location, they shall not be disposed of until FNSRO or the responsible commodity contractor approves.

When circumstances require prior disposal of a commodity, the quantity and manner of disposition shall be reported to the appropriate FNSRO. If any damaged or out-of-condition commodities are inadvertently issued to a household and are rejected or returned by the household because the commodities were unsound at the time of issuance and not because the household failed to provide proper storage, care or handling, the State agency shall replace the damaged or out-of-condition commodities with the same or similar kind of commodities which are sound and in good condition. The State agency shall account for such replacements on its monthly inventory report.

(Approved by the Office of Management and Budget under control number 0584–0071)

(44 U.S.C. 3506)

[44 FR 35928, June 19, 1979, as amended at 47 FR 746, Jan. 7, 1982. Redesignated by Amdt. 1, 47 FR 14137, Apr. 2, 1982, and further redesignated at 64 FR 73384, Dec. 30, 1999.]

## § 253.11 Administrative funds.

(a) *Allocation of administrative funds to FNS Regional Offices.* Each fiscal year, after enactment of a program appropriation for the full fiscal year and apportionment of funds by the Office of Management and Budget, administrative funds will be allocated to each FNS Regional Office for further allocation to State agencies. To the extent practicable, administrative funds will be allocated to FNS Regional Offices in the following manner:

(1) 65 percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the total number of participants nationally, averaged over the three previous fiscal years; and

(2) 35 percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally.

(b) *Allocation of administrative funds to State agencies.* Prior to receiving administrative funds, State agencies must submit a proposed budget reflecting planned administrative costs to the appropriate FNS Regional Office for approval. Planned administrative costs must be allowable under part 277 of this chapter. To the extent that funding levels permit, the FNS Regional Office allocates to each State agency administrative funds necessary to cover 75 percent of approved administrative costs.

(c) *State agency matching requirement.* State agencies must match administrative funds allocated to them as follows:

(1) Unless Federal administrative funding is approved at a rate higher than 75 percent of approved administrative costs, in accordance with paragraph (c)(2) of this section, each State agency must contribute 25 percent of its total approved administrative costs. Cash or non-cash contributions, including third party in-kind contributions, and the value of services rendered by volunteers, may be used to meet the State agency matching requirement. In accordance with part 277 of this chapter, such contributions must:

(i) Be verifiable;

(ii) Not be contributed for another federally-assisted program, unless authorized by Federal legislation;

(iii) Be necessary and reasonable to accomplish program objectives;

(iv) Be allowable under Part 277 of this chapter;

(v) Not be paid by the Federal Government under another assistance agreement unless authorized under the other agreement and its subject laws and regulations; and

(vi) Be included in the approved budget.

(2) The State agency may request a waiver to reduce its matching requirement below 25 percent of approved administrative costs. In its proposed budget, the State agency must submit compelling justification to the appropriate FNS Regional Office that it is unable to meet the 25 percent matching requirement and that additional administrative funds are necessary for the effective operation of the program. The FNS Regional Office may, at its discretion, approve a reduction of the matching requirement and provide additional administrative funds to cover more than 75 percent of approved administrative costs to a State agency that provides compelling justification.