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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

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whole or in part with State Administrative Expense Funds.

(Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 9, 48 FR 19355, Apr. 29, 1983, as amended at 71 FR 39519, July 13, 2006]

§ 235.10 [Reserved]

§ 235.11 Other provisions.

(a) *State funds.* Expenditures of funds from State sources in any fiscal year for the administration of the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program shall not be less than that expended or obligated in fiscal year 1977. Failure of a State to maintain this level of funding will result in the total withdrawal of SAE funds. State agencies shall follow the provisions of 7 CFR part 3016 in identifying and documenting expenditures of funds from State revenues to meet the State funding requirement of this paragraph.

(b) *Sanctions imposed.* (1) FNS may recover, withhold or cancel payment of up to one hundred (100) percent of the funds payable to a State agency under this part, whenever it is determined by FNS that the State agency has failed to comply with the requirements contained in this part and in parts 210, 215, 220 and 226 of this title and in part 250 of this title as it applies to the operation of the Food Distribution Program in schools and child and adult care institutions.

(2) In addition to the general provisions found in paragraph (b)(1) of this section, FNS may, for any fiscal year, recover, withhold or cancel payment of up to thirty-three and one-third (33 $\frac{1}{3}$) percent of the funds payable to, and to be used by, a State agency under § 235.4(a)(1) and § 235.4(b)(3) for administration of school nutrition programs in FNS determines that a State agency is deficient in one or more of the following:

(i) Implementing the requirements in § 210.18;

(ii) Conducting the number of reviews required in § 210.18 within the timeframes specified;

(iii) Covering the areas of review set forth in the § 210.18, carrying out corrective action, and assessing and recovering claims as prescribed in §§ 210.18 and 210.19 of this title;

(iv) Conducting reviews with sufficient thoroughness to identify violations of the areas of review identified in § 210.18; and

(v) Meeting the reporting deadlines prescribed for the forms (FNS-10 and SF-269) required under § 210.5(d) of this title.

(3) Furthermore, FNS may for any fiscal year, recover, withhold or cancel payment of up to thirty-three and one-third (33 $\frac{1}{3}$) percent of the funds payable to, and to be used by, a State agency under § 235.4(a)(2), § 235.4(b)(1) and § 235.4(b)(4) for administration of the Child and Adult Care Food Program if FNS determines that a State agency is deficient in meeting the reporting deadlines prescribed for the forms (FNS-44 and SF-269) required under § 226.7(d) of this title.

(4) In establishing the amounts of funds to be recovered, withheld or cancelled under paragraph (b)(2) and (b)(3) of this section, FNS shall determine the current or projected rate of funds usage by the State agency for all funds subject to sanction, and after considering the severity and longevity of the cumulative deficiencies, shall apply an appropriate sanction percentage to the amount so determined. During the fiscal year under sanction, a State agency may not use funds not included in the determination of funds usage to replace sanctioned funds. The maximum sanction percentage that may be imposed against a State agency for failure within one or more of the five deficiency areas specified in paragraph (b)(2) of this section for any fiscal year shall be thirty-three and one-third (33 $\frac{1}{3}$) percent of the funds payable under § 235.4(a)(1) and § 235.4(b)(3) for administration of school nutrition programs for such fiscal year.

(5) Before carrying out any sanction against a State agency under this section, the following procedures shall be implemented:

(i) FNS shall notify the Chief State School Officer or equivalent of the deficiencies found and of its intention to impose sanctions unless an acceptable