

§ 235.10

disposition of property acquired in 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;

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

(vi) Meeting the professional standards required in paragraph (g) of this section.

(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:

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(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 corrective action plan is submitted and approved by FNS within 60 calendar days.

(ii) The State agency shall develop a corrective action plan with specific timeframes to correct the deficiencies and/or prevent their future recurrence. The plan will include dates by which the State agency will accomplish such corrective action.

(iii) FNS shall review the corrective action plan. If it is acceptable, FNS shall issue a letter to the Chief State School Officer or equivalent approving the corrective action plan, and detailing the technical assistance that is available to the State agency to correct the deficiencies. The letter shall advise the Chief State School Officer or equivalent of the specific sanctions to be imposed if the corrective action plan is not implemented within timeframes set forth in the approved plan.

(iv) Upon advice from the State agency that corrective action has been taken, FNS shall assess such action and, if necessary, shall perform a follow-up review to determine if the noted deficiencies have been corrected. FNS shall then advise the State agency if the actions taken are in compliance with the corrective action plan or if additional corrective action is needed.

(v) If an acceptable corrective action plan is not submitted and approved within 60 calendar days, or if corrective action is not completed within the time limits established in the corrective action plan, FNS may impose a sanction by assessing a claim against the State agency or taking action in accordance with 7 CFR part 3016. FNS shall notify the Chief State School Officer or equivalent of any such action.

(vi) If, subsequent to the imposition of any sanction, FNS determines that the noted deficiencies have been resolved and that the programs for which SAE funds were made available are being operated in an acceptable manner, FNS may return to the State agency or restore to the State agency's Letter of Credit (LOC) part or all of any sanctioned SAE funds.

(6) In carrying out sanctions under this part for any fiscal year, FNS may reduce the amount of allocated SAE funds payable to a State agency in whole or in part during such fiscal year and during following fiscal years if necessary.

(7) Any State agency which has a sanction imposed against it in accordance with this paragraph shall not be eligible to participate in any reallocation of SAE funds under §235.5(d) of this part during any fiscal year in which such sanction is being applied.

(c) *Termination for convenience.* FNS and the State agency may terminate the State agency's participation under this part in whole, or in part, when both parties agree that continuation would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS shall allow full credit to the State agency for the Federal share of the noncancellable obligations, properly incurred by the State agency prior to termination.

(d) In taking any action under paragraphs (b) or (c) of this section, FNS and the State agency shall comply with the provisions of 7 CFR part 3016 concerning grant suspension, termination and closeout procedures.

(e) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional operating requirements which are not inconsistent with the provisions of this part.

(f) *Administrative review process.* When FNS asserts a sanction against a State agency under the provisions of paragraph (b) of this section, the State agency may appeal the case and be afforded a review by an FNS Administrative Review Officer of the record including any additional written submissions prepared by the State agency.

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(1) FNS shall provide a written notice and shall ensure the receipt of such notice when asserting a sanction against a State agency.

(2) A State agency aggrieved by a sanction asserted against it may file a written request with the Director, Administrative Review Staff, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Va. 22302 for a review of the record. Such request must be post-marked within 30 calendar days of the date of delivery of the sanction notice and the envelope containing the request shall be prominently marked "REQUEST FOR REVIEW." If the State agency does not request a review within 30 calendar days of the date of delivery of the sanction notice, the administrative decision on the sanction shall be final.

(3) Upon receipt of a request for review, FNS shall promptly provide the State agency with a written acknowledgment of the request. The acknowledgment shall include the name and address of the FNS Administrative Review Officer reviewing the sanction. The acknowledgment shall also notify the State agency that any additional information in support of its position must be submitted within 30 calendar days of the receipt of the acknowledgment.

(4) When a review is requested, the FNS Administrative Review Officer shall review all available information and shall make a final determination within 45 calendar days after receipt of the State agency's additional information. The final determination shall take effect upon delivery of the written notice of this final decision to the State agency.

(5) The final determination of the FNS Administrative Review Officer will be the Department's final decision in the case and will not be subject to reconsideration.

(g) *Professional standards.* State agencies must meet the minimum hiring and training standards established by FNS.

(1) *Hiring standards for State directors of school nutrition programs.* Beginning July 1, 2015, newly hired State agency directors with responsibility for the administration of the National School

Lunch Program under part 210 of this chapter and the School Breakfast Program under part 220 of this chapter must have:

(i) Bachelor's degree with an academic major in areas including food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;

(ii) Extensive relevant knowledge and experience in areas such as institutional food service operations, management, business, and/or nutrition education (experience in three or more of these areas highly recommended); and

(iii) Additional abilities and skills needed to lead, manage and supervise people to support the mission of Child Nutrition programs.

(iv) It is also strongly preferred that new hires possess:

(A) Master's degree with an academic major in areas including food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;

(B) At least five years of experience leading people in successfully accomplishing major multi-faceted projects related to child nutrition and/or institutional foodservice management; and

(C) Professional certification in food and nutrition, food service management, school business management or a related field as determined by FNS.

(2) *Hiring standards for State directors of distributing agencies.* Beginning July 1, 2015, newly hired State agency directors with responsibility for the administration of the distribution of USDA donated foods under part 250 of this chapter must have:

(i) Bachelor's degree in any academic major;

(ii) Extensive relevant knowledge and experience in areas such as institutional food service operations, management, business, and/or nutrition education; and

(iii) Additional abilities and skills needed to lead, manage and supervise people to support the mission of Child Nutrition programs.

(iv) It is also strongly preferred that new hires possess at least five years of experience in institutional food service operations.

(3) *Continuing education/training standards for State directors of school nutrition programs and distributing agencies.* Each school year, all State directors with responsibility for the National School Lunch Program under part 210 of this chapter and the School Breakfast Program under part 220 of this chapter, as well as those responsible for the distribution of USDA donated foods under part 250 of this chapter, must complete a minimum of 15 hours of training in core areas that may include nutrition, operations, administration, communications and marketing. Additional hours and topics may be specified by FNS, as needed, to address Program integrity and other critical issues.

(4) *Provision of annual training.* At least annually, State agencies with responsibility for the National School Lunch Program under part 210 of this chapter and the School Breakfast Program under part 220 of this chapter, as well as State agencies with responsibility for the distribution of USDA donated foods under part 250 of this chapter, must provide or ensure that State agency staff receive annual continuing education/training.

(i) Each State agency with responsibility for the National School Lunch Program under part 210 of this chapter and the School Breakfast Program under part 220 of this chapter must provide a minimum of 18 hours of continuing education/training to school food authorities. Topics include administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures); the accuracy of approvals for free and reduced price meals; the identification of reimbursable meals at the point of service; nutrition; health and food safety standards; the efficient and effective use of USDA donated foods; and any other appropriate topics, as determined by FNS, to ensure program compliance and integrity or to address other critical issues.

(ii) Each State agency with responsibility for the distribution of USDA donated foods under part 250 of this chapter must provide or ensure receipt of continuing education/training to State distribution agency staff on an annual

basis. Topics may include the efficient and effective use of USDA donated foods; inventory rotation and control; health and food safety standards; and any other appropriate topics, as determined by FNS, to ensure program compliance and integrity or to address other critical issues.

(5) *Records and recordkeeping.* State agencies must annually retain records for a period of three years to adequately demonstrate compliance with the professional standards for State directors of school nutrition programs established in this paragraph.

(6) *Failure to comply.* Failure to comply with the professional standards in this paragraph may result in sanctions as specified in paragraph (b) of this section.

(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); secs. 805 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773); sec. 7(a), Pub. L. 95-627, 93 Stat. 3622, 42 U.S.C. 1751)

[41 FR 32405, Aug. 3, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §235.11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§235.12 Information collection/record-keeping—OMB assigned control numbers.

7 CFR Section where requirements are described	Current OMB control No.
235.3(b)	0584-0067.
235.4	0584-0067.
235.5(b), (d)	0584-0067.
235.7(a), (b)	0584-0067.
235.9(c), (d)	0584-0067.
235.11	0584-0067.
210.7	0584-0067.

[80 FR 11096, Mar. 2, 2015]

PART 240—CASH IN LIEU OF DONATED FOODS

- Sec.
- 240.1 General purpose and scope.
- 240.2 Definitions.
- 240.3 Cash in lieu of donated foods for program schools.
- 240.4 Cash in lieu of donated foods for non-residential child and adult care institutions.