

## § 205.18

## 31 CFR Ch. II (7-1-01 Edition)

for the Federal agency's operations and will not be paid from amounts available for funding the programs of the Federal agency.

(3) If a Federal agency does not pay a charge for noncompliance within 45 days after receiving a Notice of Assessment, the FMS will debit the appropriate Federal agency account.

(4) A Federal interest liability resulting from circumstances beyond the control of a Federal agency does not constitute noncompliance.

(k) *State noncompliance.* If a State materially fails to comply with this subpart, the FMS may take one or more of the following actions, as appropriate in the circumstances:

(1) Request a Federal agency or the General Accounting Office to conduct an audit of the State to determine interest owed to the Federal Government, and implement procedures to recover such interest; or

(2) Deny the reimbursement of all or a part of the State's direct cost claim; or

(3) Take other remedies legally available.

(1) *Failure to request funds.* If a State repeatedly or deliberately fails to request funds in accordance with the procedures established for its funding techniques, as set forth in § 205.7 or in a Treasury-State Agreement, the FMS may deny the State payment or credit for any resultant Federal interest liability, notwithstanding any other provision of this part.

### § 205.18 Appeals and dispute resolution.

(a) *Appeal by a Federal agency.* A Federal agency may appeal any charge assessed by the FMS for noncompliance by submitting an appeal in writing to the Assistant Commissioner, Federal Finance (hereinafter Assistant Commissioner), of the FMS, within 45 days of the date of the Notice of Assessment. The appeal shall include a concise factual statement of the conditions leading to the Notice of Assessment, the basis of the appeal, and the action requested by the agency. In the event of an appeal, the charge imposed under the Notice of Assessment will be deferred pending the results of the appeal.

(1) *Appeal review process.* The Assistant Commissioner will review the Notice of Assessment, any documentation supporting the Notice, and the written appeal from the agency. If based on this review, the Assistant Commissioner finds that additional information is required, the Assistant Commissioner may request to meet with the agency, as well as other parties selected by the Assistant Commissioner, as part of the review process.

(2) *Decision.* The Assistant Commissioner will issue a written decision within 30 days of receipt of the appeal. The Assistant Commissioner may unilaterally extend this period for an additional 30 days if required. The decision of the Assistant Commissioner whether to uphold the Notice of Assessment, to overturn the Notice, or to mandate some other action will be stated in the written decision. Other actions mandated may include a reduced charge, a deferral of the charge, an alternate solution to cash management improvement, or any combination thereof. The basis of the decision, the amount of the charge and the effective date of the charge will be stated in the written decision. The effective date of the charge may be retroactive to the date indicated in the Notice of Assessment.

(b) *Resolution of disputes.* If a dispute arises from the implementation or administration of this subpart, the following resolution mechanism is available:

(1) The aggrieved party may submit a written appeal to the Assistant Commissioner. The aggrieved party shall concurrently serve a copy of the written appeal to the other concerned parties.

(2) Within 30 days of the submission of the written appeal, the aggrieved party shall submit to the Assistant Commissioner a written statement not exceeding 15 pages, with supporting documentation in appendices, that articulates the dispute, the aggrieved party's position, and the relief sought. The aggrieved party shall concurrently serve its statement upon the other concerned parties.

(3) Within 30 days of receipt of the aggrieved party's statement, the responding party may submit a response statement not exceeding 15 pages, with

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supporting documentation in appendices, to the Assistant Commissioner. The responding party shall concurrently serve its response statement to the other concerned parties.

(4) The Assistant Commissioner will issue a written decision within 30 days after the period for the submission of the response statement. The Assistant Commissioner may unilaterally extend the deadline for issuing a decision by 30 days if required. The Assistant Commissioner's decision shall be the final agency action on the part of the FMS for the purposes of judicial review procedures under the Administrative Procedures Act, 5 U.S.C. 701-706, unless either party invokes the provisions of the Administrative Dispute Resolution Act of 1990, 5 U.S.C. 581-593 (ADRA), in accordance with the following.

(i) Either party may seek to invoke the assistance of a neutral party appointed under the provisions of the ADRA within 30 days of receipt of the Assistant Commissioner written decision. The party invoking the ADRA shall notify both the Assistant Com-

missioner and the responding party in writing. With the written mutual consent of the parties and the Assistant Commissioner, a neutral party appointed under the provisions of the ADRA may assist in resolving the dispute through the use of alternate means of dispute resolution as defined in the ADRA.

(ii) If the party invoking the ADRA is unable to reach a satisfactory resolution of the problem using the ADRA, the Assistant Commissioner's decision shall be the final agency action on the part of the FMS for purposes of the judicial review procedures under the Administrative Procedure Act, 5 U.S.C. 701-706.

[57 FR 60676, Dec. 21, 1992; 58 FR 4460, Jan. 14, 1993]

**APPENDIX A TO SUBPART A TO PART 205—DEFINITION OF MAJOR FEDERAL ASSISTANCE PROGRAM**

Beginning with State fiscal year 2000, "Major Federal Assistance Program" for State governments is defined by the following criteria:

Total expenditure of Federal financial assistance for all programs	Major Federal assistance program means any program that exceeds
Between \$300,000 and \$100 million inclusive .....	\$300,000 or 3 percent of such total expenditures.
Over \$100 million but less than or equal to \$1 billion .....	\$3 million or 0.30 percent of such total expenditures.
Over \$1 billion but less than or equal to \$2 billion .....	\$4 million or 0.30 percent of such total expenditures.
Over \$2 billion but less than or equal to \$3 billion .....	\$7 million or 0.30 percent of such total expenditures.
Over \$3 billion but less than or equal to \$4 billion .....	\$10 million or 0.30 percent of such total expenditures.
Over \$4 billion but less than or equal to \$5 billion .....	\$13 million or 0.30 percent of such total expenditures.
Over \$5 billion but less than or equal to \$6 billion .....	\$16 million or 0.30 percent of such total expenditures.
Over \$6 billion but less than or equal to \$7 billion .....	\$19 million or 0.30 percent of such total expenditures.
Over \$7 billion but less than or equal to \$10 billion .....	\$20 million or 0.30 percent of such total expenditures.
Over \$10 billion .....	\$30 million or 0.15 percent of such total expenditures.

[64 FR 24243, May 5, 1999]

**Subpart B—Potential Liabilities on Intergovernmental Funds Transfers Included in the Catalog of Federal Domestic Assistance but Otherwise Generally Excluded From Subpart A**

**§ 205.19 Scope of subpart.**

This subpart applies to programs in the Catalog of Federal Domestic Assistance that are not subject to subpart A.

**§ 205.20 Cash advances.**

(a) Cash advances to a State shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the State in carrying out a program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual cash outlay by the State for direct program costs and the proportionate share of any allowable indirect costs.